

UNIVERSITY OF NAIROBI

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**HUMANITARIAN INTERVENTION IN AFRICA:
A RETROSPECTIVE STUDY OF SOMALIA 1978-2004**

BY

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**Thesis submitted in partial fulfillment of the MA Degree in
International Studies at the Institute of Diplomacy and International
Studies, University of Nairobi.**

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DECLARATION

This dissertation is my own original work and has not been presented for a degree in any other University.

Ahamed Mohammed

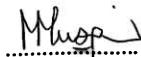

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This dissertation has been submitted for examination with my approval as university supervisor.

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ACKNOWLEDGEMENTS

In the process of writing this thesis, I received enormous moral and material support from several individuals. The thesis was submitted to the Institute of Diplomacy and International Studies (IDIS), University of Nairobi to whom I acknowledge my thanks for all the assistance. I also wish to acknowledge the HQs, The Kenya Army and the Department of Defence, Kenya for sponsoring me to study with the University of Nairobi and meeting all the financial needs. I owe them a debt of gratitude for their support without which this thesis would not have been possible.

I wish to thank my supervisor Dr. Makumi Mwangi for all his guidance and patience in overseeing this thesis from inception to end and for inspiring and challenging me throughout this endeavour. My special gratitude is also due to the staff of the National Defence College, Kenya particularly the outgoing and incoming Commandants – Lt Gen J K Koech and Lt Gen J Tuwei, my outgoing and incoming sponsor Senior Directing Staff – Maj General PJO Opiyo and Maj General E Sasia, and the library staff.

Many thanks to my close relatives and friends for their support during my studies and my colleagues at the National Defence College, participants of Course 08/2005, with special mention of the international fellows, for making the year so rewarding.

Finally, my warmest thanks are reserved for my family; my spouse, Ralia and our children Sadia, Zamzam, Yasmine and Safina for their understanding and support during the period of my study. Special thanks are due to our last born, Safina, for accompanying me in burning the midnight oil particularly during the winding up of this thesis. Without their encouragement and enduring love, I would have found it difficult to complete this project.

To Ralia, Sadia, Zamzam, Yasmin and

ABSTRACT

The purpose of this study is to examine the main aspects of humanitarian intervention and its application to Africa. The desire to explore this area of study has been driven by the experiences in Somalia, Rwanda, Kosovo and Darfur where the concept and rationale of intervention has been put to question as whereas no action has been taken in some needy situations in others the response has been swift.

To address these issues, this study provides an overview and justifies the place of humanitarian intervention in international law. It analyses Somalia under Siyad Barre's rule, the clan system, the collapse of institutions and government and gross violations of human rights. It further analyses the civil war after Barre, its effect on society and the attendant gross human rights abuses. A discussion is made of possible interveners while the conclusion posits the future place of humanitarian intervention.

The central argument of this thesis attempts to demonstrate that humanitarian intervention in a state that violates gross human rights, is a moral responsibility on other states. In Africa's case, humanitarian intervention is of special significance since the level of human rights violations on the continent has been distinctly high. The study highlights Africa's recent commitments of overturning its traditional posture of non-intervention in the internal affairs of states where governments are guilty of human rights violations.

A retrospective study of Somalia has been chosen because the state has been a victim of gross human rights violations but humanitarian intervention was never undertaken. The study is optimistic that had humanitarian intervention been undertaken at the opportune moment, the crisis in Somalia could have been averted.

ABBREVIATIONS

AU	African Union
ECOWAS	Economic Commission of West African States
ICISS	International Commission on Intervention and State Sovereignty
NATO	North Atlantic Treaty Organisation
NEPAD	New Partnership for Africa's Development
OAU	Organisation of African Unity
OIC	Organisation of Islamic Conference
SNM	Somali National Movement
SSDF	Somali Salvation Democratic Front
TNG	Transitional National Government
UK	United Kingdom
UN	United Nations
UNOSOM	United Nations Operation in Somalia
UNITAF	United Nations Task Force
UNPROFOR	United Nations Protection Force
USA	United States of America
USC	United Somali Congress

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HUMANITARIAN INTERVENTION IN AFRICA: A RETROSPECTIVE STUDY OF SOMALIA 1978-2004

CHAPTER I INTRODUCTION

Background to the Study

Since the end of the Cold War, there has been an increase in intra state conflict that has resulted in gross human right violations perpetrated by the state against its citizens. The international response in different areas has been varying. While in Kosovo and northern Iraq the gross violations resulted in external military intervention that was justified as humanitarian intervention, in Somalia, Rwanda and Darfur, in which there was a strong case for such intervention, there was no international action taken or any action taken was too little or too late.¹ This thesis provides a study on the concept of humanitarian intervention in Africa by focusing on its application to Somalia.

While general intervention, the action of one state to intervene in what may be considered the domestic affairs of another state, has attracted a lot of debate, this has not been the case with humanitarian intervention which has strength from the standpoint of universal human rights. Humanitarian intervention initially posed a challenge for an international society built on principles of sovereignty, non intervention and non use of force. It was however fundamentally, the growth of human rights discourse that gave the international community the right to involve itself in areas that had been beyond its reach before particularly in the face of sovereignty which was an intangible value in the past. Following these developments, human rights essentially became universal and the legal

¹ Adams, Robert. 'The United Nations and Humanitarian Intervention' in Welsh J M (ed) *Humanitarian Intervention and International Relations*. New York: Oxford University Press, 2004, pp. 71-97.

and institutional structures were developed and integrated into international law. From the outset, this can be justified on the basis that the United Nations Charter commits states to protecting fundamental human rights and there is also a right of humanitarian intervention in customary international law.² With the operational concept of intermesticity, the sharing of borders between internal and international matters and the ingredients of each influencing the other, human rights issues have attracted different actors and interests.

Humanitarian intervention is a common good. It aims to stop gross human rights violations hence its pro-democracy coloration. Humanitarian intervention is a justified attack against sovereignty and a justified interference in the internal affairs of a state that perpetrates human rights violations against its peoples.

Human rights abuses have causes that rise from social and political order within. The aim of this study is identify gross human rights abuses at their earliest occurrence in Somalia and to establish in retrospective whether humanitarian intervention at that point, would have saved the country from going down to total collapse as was the case. Such early intervention, through the use of force, with most of the structures of state still intact, could possibly have averted the resultant human suffering.

For the purpose of this study, humanitarian intervention will be defined as the action of an international or regional organisation or a state to use force inside the borders of another state in gross and widespread violations of human rights to save the citizens from the actions of their own government and undertaken without the consent of the state

² Arend A Clark and R J Beck. *International Law and the Use of Force*. London: Routledge, 1993.

that has perpetrated such atrocities on its people. It is thus characterised by coercion, a breach of sovereignty and is non-consensual.

Using Somalia in retrospect from the end of its conflict with Ethiopia over the Ogaden Province in 1978, through the collapse of the state in 1991, to the election of a government in Nairobi, Kenya in 2005, this study will establish whether gross human rights violations were committed in Somalia that would have demanded humanitarian intervention. The elements of threshold and ripe moments for humanitarian intervention will also be considered. In many ways this study is also an epistemological problem; would the future of Somalia from the historical standpoint of 1978 have been different had humanitarian intervention been undertaken with the initial occurrences of human rights violations and thus have given the state a different past and present history.

The Research Problem

There have been instances of gross human rights violations in many African countries. The international response, through humanitarian intervention, has however not been undertaken at the right moment and proportion consequently leading to human suffering and its attendant problems including genocide and refugee problems. A good example is the crisis in Darfur which has been defined as genocide by the UN Security Council but humanitarian intervention has not been undertaken to avert the gross human rights abuses. Thus whereas there is consensus on what constitutes gross human rights violations, there is a drag in undertaking humanitarian intervention thus aggravating the problem. The international community should learn from the lessons of Rwanda where in 1994, the Security Council failed to act on UN Force Commander Romeo Dallaire's warnings about imminent extermination in Rwanda and the consequences were tragic.

The moral question has been why the international community failed to intervene as soon as the genocide began in April 1994. This failure by the international community to stop the genocide demonstrates the limits of states as custodians of human rights. The question is to determine whether had humanitarian intervention been undertaken immediately the gross human right violations occurred, this would have changed the grave situation that followed? Thus the problem is to determine the threshold and right moment to undertake humanitarian intervention in gross human rights violations?

The final decision to intervene in gross human rights violations has also been a problem. The decision seems to rest on the subjective decision of individual states e.g. due to lack of objective standards, a state will determine its own threshold for violations of human rights before intervening in another state. Thus the problem is whether had there been clear objective standards i.e. consensus on humanitarian intervention, states would have made their subjective decisions to intervene in ways that would have changed Somalia's history.

Purpose of the Study

A fundamental concern in the 21st century is the challenge posed by states when they commit gross and systematic human rights violations against their citizens. The international community cannot afford to sit and watch in such circumstances and a humanitarian intervention becomes inevitable. Against this backdrop, the purpose of this study is to address humanitarian intervention as a positive and practical response to gross human rights abuses. This study will establish whether had humanitarian intervention been undertaken at the right moment, this would have changed the history of Somalia by containing the situation and possibly averting the eventual collapse of the state. The study

will bring out the theory and practice of humanitarian intervention and will examine the political, legal, and ethical issues involved in humanitarian intervention and their application to the conflict in Somalia.

Objectives of the Study

The objectives of this study are:

- a. To examine the legal and ethical/moral debates on humanitarian intervention so as to see their practicability in the Somalia crisis.
- b. To identify instances of gross human rights violations in Somalia between 1978 - 2004 that would have invited humanitarian intervention and possibly have changed the past and future of Somalia.

Justification of the Study

The importance of this study is that it emphasises the concept of early and prompt action to contain human rights violations as perpetrated by a government against its citizens. It can be argued that if obligations exist to ameliorate calamities underway, it would be expected that there would also be early, equal and forceful obligations to prevent such calamities.

A case study of Somalia has been chosen because Somalia is a country that has gone through turmoil but where gross human rights violations were evident quite early and long before the eventual collapse of the State. Using Somalia as a reference point, the study will argue that if the right opportunities were considered and appropriate action taken, the grave human suffering and eventual collapse of state could have been averted.

Instability and intra-state conflict in Africa, resulting in human rights abuses, are not getting any better. With this in mind, this humanitarian intervention study about one

of the most violent intra-state conflicts in Africa, with massive human rights violations, is therefore of considerable relevance. This study is important as the research findings will provide more understanding on the subject of humanitarian intervention and human rights violations and should be a vital source of reference for policy makers, researchers, peacekeepers and conflict managers as it is expected to reveal interesting dynamics on human rights abuses and indicate more areas of future research. It should also enable the United Nations, Regional Organisations and state and non state actors to see the need for early humanitarian intervention to avert gross human rights violations.

Limitations and Assumptions

This study will limit itself to humanitarian intervention and will not deal with general intervention. It will also not deal with humanitarian assistance which may easily be confused with humanitarian intervention. Humanitarian assistance basically deals with material assistance through relief and aid to alleviate human suffering while humanitarian intervention is coercive use force to contain gross human rights violations perpetrated by a state against its people. It is the latter form that is the basis of this study.

Literature Review

The available literature on humanitarian intervention provides different perspectives. Chesterman's³ *Just War or Just Peace* and Christine Gray's⁴ *International Law and the Use of Force*, focus mainly on positive international law. But Gray's study, based to a large degree on the analysis of state practice, places the issue of humanitarian intervention into the broader framework of the law on the use of force which allows for insights into many parallels in other strands of this body of law.

³ Chesterman, Simon. *Just War or Just Peace*. Oxford, Oxford University Press, 2001.

⁴ Gray, Christine. *International Law and the Use of Force*. New York: Oxford University Press Inc., 2000.

Humanitarian Intervention and International Relations, edited by Welsh,⁵ has articles on the theory, politics and practice of humanitarian intervention. Welsh discusses the conflict between sovereignty and human rights and expounds on the evolution of the notion of sovereignty from 'sovereignty as authority' (control over territory) to 'sovereignty as responsibility' (respect for a minimum standard of human rights). Thus as a result of this, massive human rights violations, within the domestic jurisdiction of a state, have been transformed into a matter of international concern. Welsh also raises the concern that humanitarian intervention is plagued by problems of will and capacity. Welsh gives a very good definition of humanitarian intervention as 'coercive interference in the internal affairs of a state, involving the use of armed force, with the purpose of addressing massive human rights violations or preventing widespread human suffering'. This definition is acceptable but lacks the element that the violations are perpetrated by the state against its peoples.

Chesterman concentrates on humanitarian intervention, but often escapes the confines of state practice and offers broader reflections on the political impact and significance of legal developments. Chesterman examines whether a right to humanitarian intervention exists under the UN Charter and in this attempt reflects a conceptual understanding of the doctrine of humanitarian intervention. He correctly indicates that humanitarian intervention may be justified where the Security Council is unwilling or unable to act to prevent atrocities. He further argues that humanitarian intervention may be justified because certain actions by a governing regime may

⁵ Welsh, Jennifer, M. *Humanitarian Intervention and International Relations*. New York: Oxford University Press Inc., 2004.

invalidate the state's sovereignty as in the case of non democratic states thereby allowing other states to intervene in support of democratic reform. This position is conceptually misplaced as it is not a function of humanitarian intervention to support democracy or governance issues but applies only in the situations of gross human rights violations to rectify the human suffering.

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Chesterman argues that the debate surrounding humanitarian intervention encapsulates crucial tensions in the international legal order between sovereignty and human rights and between the prohibition of use of force and the protection of human dignity. While this is true, Chesterman introduces a dilemma as to the place of humanitarian intervention in international law by arguing that as a legal concept, humanitarian intervention is incoherent – any right of humanitarian intervention amounts not to an asserted exception to the prohibition of use of force, but to a lacuna in the enforceable content of international law. Chesterman goes on to indicate that humanitarian intervention will remain at most in a legal penumbra; sometimes given legitimacy by the Security Council, sometimes merely tolerable by states. This notion is incorrect as humanitarian intervention has a rightful place in international law in the event of gross human right violations and is therefore quite different from the use of force in general intervention whose place in international law may be debatable.

Wheeler,⁶ in *Saving Strangers*, bases his analysis on a solidarist theory of international relations, contrasting it with pluralism's less favourable view of humanitarian intervention. From the perspective of political science, his thorough account of state practice in eight cases since 1945 seeks to reveal a fundamental change in the

⁶ Wheeler, N. J. *Saving Strangers: Humanitarian Intervention & International Society*. Oxford: Oxford University Press, 2002.

discourse on international relations, with a pluralist attitude replaced by more solidarist views since the end of the Cold War.

Gray, Chesterman and Wheeler agree that neither the examples during the Cold War (especially India/Pakistan, Vietnam/Cambodia and Tanzania/Uganda) nor more recent cases such as the interventions in northern Iraq or in Kosovo reflect an acceptance of such a right by state practice. They rely not only on the objections to the legality of actions by significant parts of the international community, but also on the justifications advanced by the intervening states. None of the states that intervened in the other state included or advanced a right to unilateral humanitarian intervention in all their actions. For a right to unilateral humanitarian intervention to emerge, its positive assertion by the actors as well as its acceptance by other states would be necessary. This has not yet occurred, and Gray and Chesterman argue convincingly against approaches that use earlier cases as precedents because of what they were, in essence, rather than what the acting states proclaimed as justification at the time.

Gray is right to point out that attempts to weaken the requirements for state practice, e.g. by counting the Security Council's failure to condemn a certain action as implicit approval, are likewise difficult to sustain. Gray adds that in all the above previous cases, the international community was divided and disturbed because these interventions were unilateral. The mere fact that states are hesitant to rely on a right to humanitarian intervention reflects the persisting weakness of the claim to it, or at least its likely controversial status.

Chesterman indicates that there are times when it is necessary to back up humanitarian words with military deeds. The example cited is that had the international

community been willing to send troops to Rwanda in April 1994, it seems probable that tens if not hundreds of thousands of lives might have been saved. This is a good observation as had humanitarian intervention been similarly employed in Somalia between 1978 and 1991, the human suffering, genocide and collapse of state would possibly have been avoided. This calls for the early assessment of any conflict to establish the early occurrence of gross human rights violations so as to allow the rapid launch of humanitarian intervention once the need is established. Welsh also addresses the non intervention in Rwanda and highlights the problem of selectivity in humanitarian intervention and how it damages the credibility not only of the United Nations, but also western states. This is a good observation as the application of double standards in humanitarian intervention has been prevalent with Africa (Rwanda, Somalia, Sierra Leone) lacking attention while Europe (Bosnia Herzegovina, Kosovo) have received much attention yet the degree of severity of human right abuses have been very different with adverse cases observed in Africa.

Wheeler supports the assumption that morality demands a right to unilateral humanitarian intervention. The degree to which morality warrants such a clear answer is however debatable. The problem of humanitarian intervention highlights the tension between human rights and state sovereignty and while human rights are based on moral grounds, state sovereignty is not or only to a little degree. In support of this claim, Wheeler's solidarist concept argues that states should satisfy certain basic requirements of decency before they qualify for the protection which sovereignty and the principle of non-intervention provides.

Chesterman shares the above argument by Wheeler. However, the current status of international law is not decisive for the primarily moral argument Wheeler makes; instead, further inquiry into the foundations of sovereignty would be needed to confirm and refute it. These views come close to that of Walzer⁷ who, while stressing the protection that sovereignty affords a people's self-determination, recognizes that in some cases of human rights violation, this protection should be denied.

In the conclusion, Chesterman argues that there is no right of humanitarian intervention in either the UN Charter or customary international law and that none of arguments was found to have merit, either in principle or in the practice of states. He goes on to add that there is virtually no *opinion juris* that supports a general right of humanitarian intervention. Surprisingly he does not make mention of the relationship between humanitarian intervention and gross human rights violations which is the main justification for humanitarian intervention. Chesterman needs to understand that the protection of human rights is of primordial importance, and is increasingly reflected in international law. As a contradiction however, Chesterman argues that humanitarian intervention is morally valid in that in the face of gross violation of human rights, something has to be done.

Morris⁸ in Welsh (ed) *Humanitarian Intervention and International Law*, argues that a response whose primary purpose is to relieve human suffering may not be sustainable in conflicts involving serious violations of humans right, as it will lose

⁷ Walzer, M. *Just and Unjust Wars: A Moral Argument with Historical illustrations*. New York: Basic Books, 1992.

⁸ Morris, Nicolas, 'Humanitarian Intervention in the Balkans', in Welsh, Jennifer, M. (ed.) *Humanitarian Intervention and International Relations*. New York: Oxford University Press Inc., 2004, pp. 98-119.

legitimacy the longer it continues without effective action to prevent suffering. Morris further argues that humanitarian intervention should have prevention and an end to the causes of suffering as its primary purpose, hence the need for the use of force to overcome any resistance. This argument supports the need for early forcible action once the need for gross violations of human rights has been established to avoid another Rwanda type case. This could also be applied to the Somali case.

There has been some attempt to define criteria for admissible humanitarian interventions. Chesterman reflects carefully on the possible criteria before rejecting a definition on the ground that any such definition would assume the possibility of an 'ideal' humanitarian intervention which is unlikely to take place. Wheeler takes a more optimistic approach and develops four core criteria: a supreme humanitarian emergency must exist; the use of force must be the last resort; the limits of proportionality must be respected; and there must be a high probability of a positive humanitarian outcome.

Indeed the quest for criteria, given state practice, and arguments in favour of a unilateral right to humanitarian intervention on the ground of positive international law, encounters severe difficulties. The establishment of acceptable criteria is in fact a lacuna in the study of humanitarian intervention. Welsh does mention that the Security Council still lacks any clear set of criteria for deciding on humanitarian intervention despite several attempts to try to develop them. He further indicates that the problem facing codification is that the current hegemon in the international system, the United States of America, is strongly opposed to establishing criteria that might tie its hand in the future. Welsh adds that checklists can only represent necessary, and not sufficient, conditions for a decision to intervene citing the case of Chechnya where the crisis has not crossed the

threshold for anyone, despite the fact that the level of human rights abuse is substantially higher than it was in Kosovo prior to intervention. Welsh concludes by stating that despite the wish by scholars to establish ideal scenarios, the unruly processes of argument and discussion within the Security Council, and in individual states, remain the key factors determining the future incidences of humanitarian intervention. This statement is true as whereas the authorisation for humanitarian intervention may come from the Security Council, the actual conduct can only be done with troops provided by individual states and which may not be available when required.

Arend and Beck⁹ in their book *International Law and the Use of Force*, define humanitarian intervention as 'the use of armed force by a state (or states) to protect citizens of the target state from large scale human rights violations there', and lay down four criteria which need to be met for intervention to be classed as humanitarian. The first is that there must be 'an immediate and extensive threat to fundamental human rights, particularly a threat to widespread loss of human life'. Second, the intervention must be for the purpose of saving human life alone and no other reasons must be evident for the intervention. Thirdly, the intervention must be without the request of the target state's government and must be done without their consent, and fourthly the intervention must not be at the request, or with the consent, of the UN. Arend and Beck argue that if the intervention is done at the request, or on the authorisation of, the UN then it is classified as a Chapter VII operation and not humanitarian intervention. This however need not be the case. Although not specifically laid down as criteria, Arend and Beck also

⁹ Arend, Antony Clark & Beck, Robert J. *International Law and the Use of Force*. London: Routledge, 1993.

state that the intervention must be to aid the citizens of the target state rather than those of the intervening state.

Using the above criteria Arend and Beck analyse eleven separate instances of intervention between 1948 and 1983 where humanitarian intervention was advanced as the justification and establish that none were truly humanitarian in nature. Despite appearing restrictive, and with the slight adjustment provided, these could be a good criteria for authorising humanitarian intervention.

Arend and Beck are sceptical that any intervention could be wholly for humanitarian grounds and raise concerns over the growing willingness to intervene for humanitarian purposes. While raising the argument that sovereignty remains sacrosanct, they base their concerns on the fact that rarely, if at all, can there be humanitarian intervention without political motivation. This raises a dilemma as any sense of political motivation compromises the legitimacy of the action as humanitarian intervention. An argument that can be raised in support of this point is the relative selectivity of intervention. There has been a trend that those forces capable of intervening (i.e. the West) do so only if they have a vested interest of some sort in the warring state or its surrounding area. There is undoubtedly some truth in this argument (the Gulf War, for example) but the limitation of resources must also be taken into account; the UN has gone from a situation where it was stifled by the veto and could do nothing, to a position where it is free to do as it wishes but does not have the resources. This does emphasise the importance of humanitarian intervention being undertaken under the auspices of the United Nations so as to avoid state interests and the importance of seeking a

multinational force as opposed to a single state despite the issues of resources and political will.

Welsh notes that one of the notable features of humanitarian intervention is the continued presence of international forces and administrators once the immediate crisis is over. This has relevance particularly in view of regime change and transitions like Kosovo and East Timor when the international community takes the target state into trusteeship. This would also have been the case had there been a humanitarian intervention in Somalia at the appropriate moment.

In Welsh (ed.) *Humanitarian Intervention in International Relation* Wheeler,¹⁰ while referring to the intervention in Kosovo, has posed the fundamental issue of who should decide when a humanitarian crisis (human rights abuse) has reached the point that recourse to force is justifiable. He adds that while there is agreement that the decision must rest with the Security Council, NATO took action on the belief that there was an extreme humanitarian crisis and it had authority to act taking note of the veto that had paralysed the Council. He further adds that the best defence of NATO's intervention was that it was an anticipatory one aimed at preventing a humanitarian catastrophe. These positions are not correct. The decision for humanitarian intervention does not rest with the Security Council but any state or states that are convinced that gross human right violations have taken place. Thus NATO was right to act in Kosovo. Secondly, on the position for anticipatory intervention, humanitarian intervention has not yet advanced to such a stage and is still confined to actual and gross violation of human rights abuses.

¹⁰ Wheeler, Nicolas, J, 'The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society,' in Welsh, Jennifer, M. (ed.) *Humanitarian Intervention and International Relations*. New York: Oxford University Press Inc., 2004, pp. 29-51.

The lacuna is whether the United Nations, regional organisations and states are able to determine all cases of humanitarian intervention in time, take the decision appropriately and rapidly and act to arrest the gross human right violations. This study will thus identify instances of gross human rights violations in Somalia that should have invited the attention of the UN or any state or states and possibly have given Somalia a better future.

Hypotheses

The first hypothesis is that humanitarian intervention is justified in gross violation of human rights. This study will therefore establish whether humanitarian intervention is an acceptable practice.

The second hypothesis is that gross violations of human rights were committed in Somalia both under the Barre rule and after the collapse of the state.

The third hypothesis is that humanitarian intervention was not undertaken in Somalia despite the occurrence of gross violations of human rights. The efficacy of humanitarian intervention in Somalia will be analysed. The study will also establish who should have intervened to save the gross violations of human rights. Humanitarian intervention has to be undertaken at the right moment for it to achieve the desired result. The study will argue that had the available opportunities been considered and humanitarian intervention undertaken, this would have contained the gross violations of human rights and possibly have changed the past and future of Somalia.

Theoretical Framework

The theoretical framework appropriate to this study is the solidarist international society theory. This theory argues that states have both a legal right and a moral obligation to

intervene forcibly in "exceptional circumstances that offend against minimum standards of humanity."¹¹ Solidarists perceive human rights as universal norms and justice as an important component of international order.¹² This approach argues that domestic and international orders derive their legitimacy and stability from their ability to protect individuals and groups from arbitrary coercion and violence. Thus human rights values are given more weight than state system values. The approach further argues that if traditional norms of sovereignty and non-intervention are not reviewed by the international community when governments violate human rights values, neither justice for the greater number nor long-term domestic and international order will be secured, as suppressed groups and individuals will inevitably revolt against their rulers and internal conflict will spill over into international conflict.¹³ This seems to be the case in Somalia, where continued gross human rights violations was not addressed by the international community due to the principle of sovereignty and, not able to bear the situation any more, the people rose against the oppression leading to internal conflict and civil war. According to Smith¹⁴ "it follows, then, that a state that is oppressive and violates the autonomy and integrity of its subjects forfeits its moral claim to full sovereignty. Thus, a liberal ethics of world order subordinates the principle of state sovereignty to the recognition and respect of human rights..... The principle of an individual's right to

¹¹ Wheeler, Nicholas J and Alex J. Bellamy. "Humanitarian Intervention and World Politics", in Baylis John and Steve Smith (eds.) *The Globalisation of World Politics*. New York, Oxford University Press, 2001, pp. 470-493.

¹² Ramsbotham, O. P. and Woodhouse, Tom. *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization*. Cambridge: Polity Press, 1996.

¹³ Ibid.,

¹⁴ Smith, Michael J., "Humanitarian Intervention: An Overview of the Ethical Issues," in Joel H. Rosenthal (ed.) *Ethics and International Affairs: A Reader*. Washington, DC: Georgetown University Press, 1999, pp. 280-283.

moral autonomy, or to the human rights enshrined in the Universal Declaration on Human Rights, should be recognized as the highest principle of world order, ethically speaking, with state sovereignty as a circumscribed and conditional norm.”

Sovereignty is thus conditional, is linked to internal legitimacy and requires governments to respect the well being and human rights of their citizens. This study thus endorses the solidarist approach in the conduct of humanitarian intervention.

Operational Definition

Humanitarian intervention is a coercive response, through use of force, to gross human rights violations. Its foundation is the subjective issue of threshold; the point at which human rights abuse give rise to humanitarian intervention by a foreign state. It is a coercive, discrete activity aimed at the authority structure of the target state.

Once gross human rights violations becomes unbearable by the citizens, “the overthrow of the government in power or even secession of a part of the population appears to be the only available means of putting an end to ongoing or threatened human rights violations of particular gravity.”¹⁵ Humanitarian intervention is appropriate at this time. At this point, the government has to be removed by force, and possibly given political asylum as a change of government is inevitable. An interim government has to be put in place preferably under the auspices of the UN and fresh elections called within a specified time. Indeed, if the protection of human rights requires the overthrow of authority structures, it would be useful to seek UN support as a prerequisite for action so as to avoid self-serving claims for the overthrow of authority structures.¹⁶

¹⁵ Fonteyne, Jean-Pierre. ‘The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the UN Charter.’ *International Law Journal*, 1974, p.263.

¹⁶ Moore John Norton. ‘The Control of Foreign Intervention in Internal Conflicts’. *Journal of International Law*. 1969, p.205.

It should be mentioned from the outset that establishing formal criteria for humanitarian intervention would generate expectations that if those criteria can be met, intervention will take place. Positive intervention, despite the possibility that the above criteria could be met, has not been forthcoming in numerous cases of human rights abuses. Defining the levels of human rights abuses so as to obtain a threshold is highly subjective and the nature of the decision, whether it is made by the UN Security Council, coalition of concerned states or an individual state, would inevitably be highly politicised. In defining the above criteria, it should be emphasised that in the debate over humanitarian intervention, a certain truism remains. Decision making in states is driven by a variety of factors, with humanitarian concerns being only one. Whether in the Security Council or with allies, decision by states, are influenced by a variety of considerations including political, military and economic interests. Thus while the criteria for humanitarian intervention might usefully be formulated to guide conduct in an intervention, they are unlikely to form the only basis of a decision to intervene. Given the nature of international relations, it should not be expected that rules for humanitarian intervention would regulate conduct absolutely. This does not however mean that the exercise of formalising criteria is necessarily useless, as at the very least, they are desirable as a guide and future ideal. It should however be emphasised that, after Kosovo, Iraq, and with Darfur ongoing, the international community needs to urgently develop clear guidelines on humanitarian intervention in the face of human rights abuses.

The notion of humanitarian intervention envisages a regime that overcomes limitations of existing international law and establishes a framework for preventing gross violations of human rights. However, a low level of conflict might produce only a

handful of human rights abuses at one point in time, but might culminate into something quite disastrous. It should be recalled that in 1994, the Security Council failed to act on UN Force Commander Romeo Dallaire's warnings about imminent extermination in Rwanda. If genocide is ever to be prevented, there is need to improve the capacity to imagine the costs of inaction and to act upon evidence of direct and immediate mortal threats. Thus this retrospective study aims to bring out gross human rights abuses in Somalia that should have invited humanitarian intervention and possibly averted the human suffering and collapse of state.

Methodology

This study will be dependent on both secondary and primary sources of data. The study will entail collection of information from the media, other researchers and Ministry of Foreign Affairs, Kenya. This information will be supplemented by books, scholarly journals, magazines, periodicals and newspapers. Further materials will be collected from the UN, human right bodies and Non Governmental Organisations.

Somalia has been particularly selected for this study because it provides a good case for a country that was embroiled in internal crisis for some time, and where despite the occurrence of gross human right violations, the UN, regional organisations and individual states did not undertake humanitarian intervention.

Chapter Outline

Chapter One: Introduction and background to the study. This chapter will identify the major themes related to the research problem, define key concepts and set the scene for the study. It will provide a statement of the study's purpose, rationale,

significance, and background; outline limitations of the study and show the nature and order of presentation of issues.

Chapter Two: Humanitarian Intervention and International Law. This chapter will trace the evolution and highlight the major contours of the practice of the doctrine of humanitarian intervention in international law. It will also evaluate the legal and ethical underpinnings surrounding humanitarian Intervention. The various schools of thoughts on the legality of humanitarian intervention and the political context of contemporary debates over sovereignty and non-intervention in the face of human rights violations will be discussed.

Chapter Three: Case study of Somalia 1978 to 1991. This chapter examines events in retrospect from the end of the Ethiopia-Somalia conflict over the Ogaden Province to the time of collapse of the state of Somalia in 1991. It highlights incidences of gross human rights violations that should have invited humanitarian intervention.

Chapter Four: Case study of Somalia 1991 to 2004. This chapter examines events in retrospect from the collapse of the state of Somalia in 1991 to 2004 also highlighting situations of gross human rights violations that should have invited humanitarian intervention.

Chapter Five: This chapter will critically assess and analyse the concept of humanitarian intervention and its application in Somalia.

Chapter Six: This chapter draws broad conclusions from the study and projects. Using the Somalia experience, it projects the future of humanitarian intervention in gross and widespread human rights violations in Africa.

CHAPTER 2

HUMANITARIAN INTERVENTION AND INTERNATIONAL LAW

Introduction

The debate on the legality of humanitarian intervention whether undertaken by an individual state, group of states, or by the United Nations under the rubric of collective security, has flared up in moments of international humanitarian crises. The legality of the concept has sometimes been controversial as seen, for example, in the USA/UK action in Kosovo where the USA advanced human rights abuses as the reason for intervention but lacked the support of the international community. This lack of support was not related to the definition of humanitarian intervention but the conviction that there were gross human rights violations in Kosovo at the time, perpetrated by the government that warranted humanitarian intervention.

The concept of humanitarian intervention has been contested throughout history. It has been prevalent after the end of the Cold War against a background of intra state war and atrocities in a number of states. Vast segments of the population in different countries were oppressed, tortured or murdered. In Rwanda more than 800,000 were killed within a space of three months which attracted the attention of the international community to the need to arrest the gross violation of human rights.

Such experiences, like in Rwanda, led UN Secretary General Kofi Annan, to suggest that the international community has the right to, and should intervene, to protect vulnerable groups in cases of immediate, severe and large-scale abuses of human rights or genocide. Annan argued that to employ military force in extreme situations of abuse is not necessarily inconsistent with the spirit of the UN Charter and international law,

particularly if such an intervention has the backing of a Security Council resolution.¹ This position is true as humanitarian intervention is the use of coercive force by a state or group of states in another state in the event of gross violation of human rights by a government against its own citizens, but need not necessarily have the backing of the UN Security Council.

General intervention violates most interpretations of customary and treaty law. The basis of this prohibition is the recognized status of states as sovereign. States are regarded as the primary unit of organization and political integrity in international affairs. Until recently, international law was essentially concerned with interactions between states, and consequently what happened inside a state, including the treatment of nationals within the state, was considered technically, to be outside of the purview of international law. The traditional doctrine of sovereignty and non intervention prevented a state or group of states from any deliberate incursion into another state without its consent. This was a commonly accepted rule but exceptions are now abounding as individuals are increasingly becoming subjects of international law,² with a concomitant relative decline in the stature of states. State sovereignty has thus been diminishing with the recognition of human right as being universal. As for humanitarian intervention, while the legal status may be debatable, with the universalisation of human rights, the use of coercive force by a state or group of states in another state in the event of gross violation of human rights by a government against its own citizens is universally accepted and justified. What is debatable however is the threshold in human rights violations that would require humanitarian intervention.)

¹ Annan, Kofi A. *The Question of Intervention: Statements by the Secretary General*. New York: United Nations Department of Public Information, 1999.

² Jarat C. 'The New Subjects of International Law.' *Brown Foreign Affairs Journal*, Spring 1991, pp. 27-30.

The 1999 unilateral NATO intervention in Kosovo raised some important issues about the concept of humanitarian intervention. The Independent International Commission on Kosovo later concluded that the NATO action was legitimate because diplomatic means had been exhausted and because it was necessary to put a stop to the Serbian atrocities and oppression of the Albanian Kosovars, but still illegal because it did not receive approval from the Security Council. This illegality is however contestable as approval by the Security Council is necessary for a general intervention but not for humanitarian intervention. The commission further suggested the establishment of some principles which could be used to guide future responses to imminent humanitarian catastrophes and to narrow the gap between legality and legitimacy. Due to these controversies, it is therefore necessary to understand the position and legality of humanitarian intervention. This will serve to highlight the possible employment of humanitarian intervention in the Somali crises since 1978. Before embarking on the legality of humanitarian intervention, it is prudent to trace its evolution and developments.

Evolution of the Doctrine of Humanitarian Intervention

The concept of humanitarian intervention can be traced back to the thirteenth century when St. Thomas Aquinas argued that a sovereign state that has the right to intervene in the internal affairs of another state when the latter mistreats its people to the degree that seems unacceptable.³ Later, Hugo Grotius, one of the earliest proponents of international law who lived in the seventeenth century, contended that a sovereign committing atrocities against his own subjects could provide justification for others taking up arms

³ Damrosch, L. et al. *Law and Force in the New International Order*. Colorado: Westview Press, 1991.

against that sovereign in defence of all humankind.⁴ This concept dominated intervention debates because while from a natural law standpoint, humanitarian intervention was justified, there was no consensus from the positivist perspective. Despite this controversy, the doctrine was reflected in state practice throughout the nineteenth and early twentieth centuries and led to the acceptance of the right of humanitarian intervention as part of customary law.⁵

In terms of recorded history humanitarian intervention first began to appear in the international legal literature after 1840.⁶ Two interventions were directly responsible namely the intervention in Greece by England, France, and Russia in 1827 to stop Turkish massacres and suppression of populations associated with insurgents in the Greek areas of the Ottoman empire and the intervention by France in Syria in 1860 to protect Maronite Christians following the massacre in the Lebanese region of the country. Other interventions that followed were the Russian intervention in Bosnia-Herzegovina and Bulgaria from 1876 to 1878, which was justified on humanitarian grounds. There was also the intervention in Macedonia from 1903 to 1908 and 1912 to 1913 by Bulgaria, Greece, and Serbia against the Turkish attempt to convert the people to the Turkish religion and culture.⁷ Due to the contentious nature of humanitarian intervention around this time, Stowell provided an interpretation for the concept as the reliance upon force for the justifiable purpose of protecting the inhabitants of another state from the treatment which is so arbitrary and persistently abusive as to exceed the limits of that authority

⁴ Abiew, F Kofi. *The Evolution of the Doctrine and Practice of Humanitarian Intervention*. The Hague: Kluwer Law International, 1999.

⁵ Fonteyne, Jean-Pierre. 'The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the UN Charter.' *California Western International Law Journal*, Vol 4, 1974, pp. 203-235.

⁶ Stapleton, Augustus. *Intervention and Non-Intervention*. London: Murray, 1966.

⁷ Fonteyne, 'The Customary International Law Doctrine of Humanitarian Intervention,' pp. 212-213.

within which the sovereign is presumed to act with reason and justice.⁸ This interpretation does conform to the current understanding of humanitarian intervention which is the use of coercive force by a state or group of states in another state in the event of gross violation of human rights by a government against its own citizens. Thus towards the later part of the 19th century, some general consistency had developed in the practice of humanitarian intervention, while the early part of the 20th century saw the development of the concept of humanitarian intervention with the universal acceptance of the concept and its application in the gross violation of human rights.

With the formation of the League of Nations after the end of World War I in 1918 and ultimately the United Nations in 1945 after the end of World War II, the international community having seen the human suffering as a result of these wars, agreed to work towards avoiding any future war of such a magnitude. Consequently, and particularly after the failure of the League of Nations, norms and structures with universal application were combined in a multilateral organisation and presented in the Charter of the United Nations for the primary purpose of the maintenance of international peace and security.⁹ Following the human suffering in WWII, and in order to emphasise its importance, human rights was given prominence in the preamble of the Charter and further emphasised after the Nuremberg and Tokyo trials. Shawcross declared, at the Nuremberg Trials in 1946, that, “the right of humanitarian intervention, in the name of the rights of man trampled upon by the state in a manner offensive to the feelings of humanity, has

⁸ Stowell, Ellery. *Intervention in International Law*. Washington, DC: John Byrne & Co, 1992.

⁹ Sutterlin, James S. *The United Nations and the Maintenance of International Security: A Challenge to be Met*. Westport: Praeger Publishers, 1995.

been recognized long ago as an integral part of the Law of Nations.”¹⁰ This was against the background of the 20th century and was basically emphasising the primacy of natural law in this area. There were crucial developments in the field of human rights immediately after the Nuremberg and Tokyo trials following the adoption of the Universal Declaration of Human Rights and the Genocide Conventions in 1948.

Events in and around the period of World War II had a profound effect in the developments of humanitarian intervention which can be traced from territorialism (absolute non intervention in another state) which had hitherto been protected by the doctrine of sovereignty and non intervention and which was challenged by the events in World War II which saw Germany split into East and West Germany and the establishment of the Nuremberg and Tokyo trials to punish those responsible for human right abuses. This was followed by the internationalisation of human rights as reflected in the various treaties that were promulgated thereafter (e.g. the Universal Declaration of Human Rights (1948), the Genocide Convention (1948), the Geneva Conventions (1949), the Convention on Torture (1984), the Refugee Conventions (1951)), to the universalisation of human rights which is the current stage in which violations of human rights are the concern of all the members of the international community. It is at this stage of universal human rights that one can properly situate the concept of humanitarian intervention.

The application and survival of the concept of humanitarian intervention was however, to be tested against the UN Charter, in view of the legitimate and well-established principle of non-intervention codified in Articles 2(4) and 2(7) of the Charter.

¹⁰ Shawcross, H. 'Introduction to the Nuremberg Trials.' *The Review of International Law* 33. 1955, p.127.

The UN Charter in article 2(4), placed a ban on use of force or threat of use of force among states but following the adoption of the universality of human rights in the various treaties, the Universal Declaration of Human Rights and the Convention on Genocide, it was accepted that humanitarian intervention was a permissible exception in the event of gross human right violations; this being an exception derived from customary international law.

In the contemporary post World War II period and during the period of the Cold War, there have been a number of interventions. These include the Anglo-French intervention in Egypt in 1956, the Soviet intervention in Hungary in 1956, the Indian intervention in Pakistan (East Pakistan and later Bangladesh) in 1971, the Indonesian intervention in East Timor in 1975, the Moroccan intervention in Western Sahara in 1975, the Vietnamese intervention in Cambodia in 1978, the intervention by Tanzania in Uganda in 1979, the Soviet intervention in Afghanistan in 1979 and the US led intervention in Grenada in 1983 and in Panama in 1989. There is however no consensus that all these were humanitarian interventions neither were they justified as such by the states that undertook them, this being partly attributed to the contentious nature of the concept of humanitarian intervention for a long time. In genuine humanitarian intervention, the objective of the intervening state must essentially be limited to the protection of human rights in the event of gross violations perpetrated by a state against its citizens. All the above interventions, claimed to be humanitarian intervention, cannot be justified under this criteria.

With the end of the Cold War and the bipolar international political order, there was an increase in the number of internal conflicts and subsequently an increase in gross

human rights abuses and consequently humanitarian interventions. The increase in humanitarian intervention can be attributed to the greater emphasis that was placed on human rights issues post 1945. The first intervention was the 1990 Nigerian led intervention in Liberia by the Economic Community of Western African States (ECOWAS). This did not initially have UN Security Council authorisation but was later belatedly endorsed. The other is the 1991 intervention in Northern Iraq to save the Kurds from oppression by Saddam Hussein undertaken by USA, UK and France. Finally was the 1998 NATO intervention in Kosovo undertaken without Security Council authorisation and the 1999 Australian led intervention in East Timor. These humanitarian interventions are justified as the states undertaking them have advanced reasons of containing gross violation of human rights by the state against its citizens. These practices have further helped to support the legality of humanitarian intervention.

Decision making on humanitarian intervention, though not a monopoly of the United Nations Security Council has become one of its key functions.¹¹ While taking note of the unilateral character of humanitarian intervention, there were a total of nine interventions between 1991 and 2000 and in all of them, the UN Security Council passed different resolutions. In seven of these cases it explicitly authorised an intervention. This is a record of activity going far beyond anything in the first forty five years of the UN's existence and is a further development of the concept of humanitarian intervention in gross violation of human rights.

It was in the context of the increased gross human rights violations that the concept of humanitarian intervention to stop human rights abuses by a state against its

¹¹ Adams, Robert. 'The United Nations and Humanitarian Intervention' in Welsh J M (ed) *Humanitarian Intervention and International Relations*. New York: Oxford University Press, 2004, pp. 71-97.

citizens, was much more than ever contemplated by the international community, regional organisations and individual states in the post Cold War period. This was intended to refocus the debate from the rights of states, to the interests of the victims, while recognising that the primary duty to protect citizens rests with the state where the individuals are citizens. The premise is that sovereignty not only protects a state from unwarranted outside interference but also obligates the state to respect the basic rights and interests of its citizens. The emphasis on human security over the sanctity of states as the reference point for international action has thus gained favour in the post-Cold War period with emerging norms supporting action to protect human rights. Having traced the evolution of the concept of humanitarian intervention, its legality will now be justified.

Sovereignty versus Humanitarian Intervention

State sovereignty was one of the three principles advanced under the Treaty of Westphalia of 1648,¹² following the end to the Thirty Year War in Europe. Sovereignty of states is a fundamental principle in international relations and is enshrined in the UN Charter under Article 2(7). Sovereignty gives states the legal right to manage their internal affairs free from outside interference and prevents powerful states intervening in weaker states. It stresses the absolute power of the nation state over its citizens and emphasises that states have the right to exercise supreme authority within the respective territorial boundaries.¹³ The UN Charter was designed to prevent war between states and sits uneasily with concern over what takes place within state borders. The principle of sovereignty might inhibit the realisation of universal human rights. The Charter's

¹² Garrett, Stephen A. *Doing Good and Doing Well: An Examination of Humanitarian Intervention*. Westport CT: Praeger 1999.

¹³ Abiew, F Kofi. *The Evolution of the Doctrine and Practice of Humanitarian Intervention*. The Hague; Kluwer Law International, 1999.

meaning is however being interpreted from an exclusive focus on sovereignty towards an emphasis on balancing sovereignty with human rights, for example, as articulated by Article 55 (c) which states that the United Nations shall promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”¹⁴

There was a Westphalian assumption which indicated that anything which does not go beyond a state's territory is within the exclusive jurisdiction of the state. This basically emphasises the sovereign independence of the state and its freedom to handle and govern its citizens as it deems appropriate. This assumption was however irremediably eroded in World War II after the Nazi problems in Germany. In addition, with developments in the post Cold War international system, particularly after the collapse of the state of Somalia, it has come to be accepted that internal conflicts could constitute a threat to international peace and security; before this, it was thought that only international conflicts could do so.

Falk challenges the principle of sovereignty and its application by stating that “nations have always had a vital concern with what goes on elsewhere, even if elsewhere is a foreign state. Sovereignty only confers a primary competence upon a nation; it is not, and never was, an exclusive competence.”¹⁵ This primary competence would be limited to what is essentially domestic, as opposed to those other issues which may originate within the state but have implications on another state like human rights abuses which may create a refugee problem in another state. Internal issues generate refugees who flee to other countries thus causing multiple problems and leading to internationalisation of the

¹⁴ *Charter of the United Nations*, Department of Public Information, United Nations, New York.

¹⁵ Falk, Richard. ‘The Legitimacy of Legislative Intervention by the United Nations’ in Roland J. Stanger (ed), *Essays on Intervention*. Ohio: Ohio State University Press, 1964, p. 36.

problem and possible involvement of other states in what was essentially an internal problem to one state.

In the absence of a well-defined set of criteria for humanitarian intervention, it might be advisable, given the inability or unwillingness of international community to react to all cases of grave human rights abuses, to legally recognize that in these extreme situations a state may be temporarily relieved from its Article 2(4) restraints in order to take unilateral or collective action to contain gross human rights violations perpetrated by a state against its citizens. Lillich argues that “to require a state to sit back and watch the slaughter of innocent people in order to avoid violating blanket prohibitions against the use of force is to stress black letter at the expense of far more fundamental values.”¹⁶ States that commit gross human rights violations have relied on sovereignty as a shield to protect them from scrutiny and to enable them to carry on their practices free from outside interference. Any state or group of states may now have not only a right but an obligation to intervene in gross violations of human rights by a state against its peoples.

Since the end of the Cold War and with developments in the field of human rights, a new understanding of sovereignty has started to emerge with the acceptance that the concept is no longer absolute. The practice of humanitarian intervention also reflects that respect for sovereignty is conditional on respect for human rights. This is best exemplified by Kofi Annan who advanced the notion that human rights and fundamental freedoms of each and every individual as enshrined in the UN Charter were just as important as national sovereignty.¹⁷ The human rights of individuals, being as important as sovereignty, is now the direct concern of the international community, and other states,

¹⁶ Lillich Richard B. ‘Forcible Self-Help to Protect Human Rights’ *Iowa Law Review* Vol. 53, 1967, p. 344.

¹⁷ Annan, Kofi A. *We the Peoples: The Role of the United Nations in the 21st Century*. New York: United Nations, 2000.

as members of the international community, have obligations towards those individuals when they are subjected to gross violations of human rights. These rights and obligations come into play when a state, or at least certain actions of a state, has been found to be illegitimate. Thus when a state violates human rights, citizens have a right to ask for and receive assistance and other states have a right and obligation to respond in a manner most befitting the particular situation, which may involve, in some way, ignoring the sovereignty of the state in favour of the sovereignty of individuals and groups. This is the most direct and major challenge to the traditional notion of state sovereignty, and represents a significant paradigm shift in the way the relationship between sovereignty, the individual and the international community is conceived. Teson indicates that when sovereignty comes into conflict with human rights, the latter must prevail arguing that:

“The human rights imperative underlies the concepts of state and government and the precepts that are designed to protect them, most prominently article 2(4). The rights of states recognized by international law are meaningful only on the assumption that those states minimally observe individual rights. The United Nations purpose of promoting and protecting human rights found in article 1(3), and by reference in article 2(4) as a qualifying clause to the prohibition of war, has a necessary primacy over the respect for state sovereignty. Force used in defence of fundamental human rights is therefore not a use of force inconsistent with the purposes of the United Nations.”¹⁸

States have invoked the principle of sovereignty to fend off criticism of gross human rights violations. Following the end of the Cold War and the emergence of the new world order, values like democracy, rule of law and respect for human rights have become top priorities on the international agenda. Consequently, it is now becoming increasingly fashionable for states and international organisations to assist people particularly in gross human rights violations thus overriding the sovereignty principle.

¹⁸ Teson, Fernando R. *Humanitarian Intervention: An Inquiry into Law and Morality*, 2nd ed. Dobbs Ferry, NY: Transnational Publishers, 1988, pp. 173-174.

States have accepted obligations under international law to protect human rights and violators may now not hide behind the protection of sovereignty. Sovereignty has thus gradually continued to lose some of its absoluteness through the entry into force of a number of treaties especially in the area of human rights. The international community now requires states to observe the minimum protection of human rights. It is now increasingly becoming accepted that a government cannot massacre its own population on the grounds that everything that goes on inside the state is within the domestic realm. Most states have formally agreed that they should respect fundamental human rights, such as the right to life and respect for the physical person, and that genocide is unlawful. The underlying assumption is that human rights is part of natural law which has primacy over the notion of state sovereignty or positive international law hence the justification for humanitarian intervention by reference to the containment of gross human rights violations. Of specific importance to this study is the understanding that the principle of sovereignty is neither absolute nor sacrosanct in the face of gross violation of human rights through systematic government oppression of its people.

Customary International Law and Humanitarian Intervention

Customary law derives from a general and consistent practice of states which is accompanied by a belief in, and sense of, legal obligation (*opinio juris*). While the concept of humanitarian intervention may be debatable, the principle is widely accepted as an integral part of customary international law.¹⁹ Fonteyne has made the point that humanitarian intervention as a matter of state practice was quite acceptable under customary international law²⁰ and humanitarian intervention is now prescribed by

¹⁹ Fonteyne. *The Customary International Law Doctrine of Humanitarian Intervention*. p. 235.

²⁰ *Ibid.*, p. 235.

customary international law.²¹ Thus while humanitarian intervention is acceptable in gross human rights violations as interpreted in various treaties, its justification was earlier enshrined in customary law in line with previous state practice. Consequently, customary law recognises forcible self-help to protect human rights as a legitimate action.²²

Reflections in history indicate that there have indeed been a number of interventions in the past which would support the arguments of state practice. Lillich traces intervention back to Weaton's 1836 treatise, which cites the interference of the Christian powers of Europe in aid of Greek insurgents against the Ottoman Empire as an illustration that international law authorizes, "such an interference... where the general interest of humanity are infringed by the excesses of a barbarous and despotic government".²³ Other examples are the interventions of France, Great Britain and Russia in Greece (1927-30) for the protection of Greeks from Turkey; French Expedition in Syria in 1860 to protect Christians from Turks. Hence the concept of 'legitimate' intervention was created.²⁴

In the period immediately preceding World War II, the majority of legal scholars who wrote on the subject accepted the legality of humanitarian intervention on the basis of customary international law. Roxburgh wrote in 1920, "it cannot be denied that public opinion and the attitude of the powers are in favour of such interventions. It may perhaps be said that in time the law of nations will recognize the rule that interventions in the interest of humanity are admissible."²⁵ The International Law Association, in its report

²¹ Ramsbotham, and Woodhouse. *Humanitarian Intervention in Contemporary Conflict*, p.63.

²² Lillich, 'Forcible Self-Help to Protect Human Rights' pp. 325-51.

²³ Chesterman, Simon. *Just War or Just Peace*, Oxford University Press, Oxford, 2001, p. 24

²⁴ Kochler, Hans. *Humanitarian Intervention in the Context of Modern Power Politics*. Vienna: International Progress Organisation, 2001, p 2.

²⁵ Lassa F. L. Oppenheim, "International Law" in R. F. Roxburgh (ed.), *International Law – A Treatise*. London: Longmans, Green and Co., 1920, p. 229.

submitted to the International Commission on Human Rights in 1970, expressed the opinion that “the doctrine of humanitarian intervention appears to have been so clearly established under customary international law that only its limits and not its existence is subject to debate.”²⁶ The case has therefore been made that humanitarian intervention is established under customary international law. A primacy of customary law is best given by Arntz who stated that:

“When a government, even acting within the limits of its right of sovereignty, violates the rights of humanity, either by measures contrary to the interests of other states, or by excessive injustice or brutality, which seriously injure our morals or civilization, the right of intervention is legitimate. For, however worthy of respect the rights of sovereignty and independence of states may be, there is something even more worthy of respect, namely the law of humanity or of human society that must not be violated.”²⁷

Based on these historical precedents, it can be argued that public opinion and the attitude of states has been in favour of humanitarian interventions thus justifying the legality of the concept under customary international law. It has been established that humanitarian intervention exists in customary law and is therefore an obligation on states to apply it when necessary. This has been well supported as there has been enough state practice, coupled with *opinio juris* to establish such a rule based on the many past instances where humanitarian intervention has been used.

The UN Charter and the Doctrine of Humanitarian Intervention

The UN Charter, an international treaty, is the constituting instrument of the Organisation and codifies major principles of international relations.²⁸ Certain articles of the Charter are considered customary international law applicable to both signatory and non-

²⁶ International Law Association, ‘The International Protection of Human Rights by General International Law’, in *International Commission on Human Rights, Interim Report of the Subcommittee 11 (1970)*.

²⁷ Fonteyne. *The Customary International Law Doctrine of Humanitarian Intervention*, p. 220.

²⁸ *Basic Facts about the United Nations*. UN Department of Public Information, New York, 2000.

signatory states alike²⁹ particularly those provisions dealing with the maintenance of international peace and security. The Charter is binding to members and no reservations in whatever nature are permitted.

Humanitarian intervention has remained a contentious issue at the UN, but has proved to be occasionally necessary though problematic in its practice.³⁰ The Charter coexists with bodies of law such as treaties and customary law that are independent of the UN Charter, and in many cases older than the UN Charter. None of the UN Charter's chapters explicitly addresses the question of humanitarian intervention and the Charter is usually interpreted as being fundamentally non-interventionist.³¹ The Charter does however set forth a number of purposes and rules which are germane to humanitarian intervention though some can be in conflict with others.

Forcible intervention into another state is prohibited in international law under Article 2(4) of the UN Charter, which states: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."³² The United Nations is restricted to intervene in internal matters of states under Article 2 (7) which states that "Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application

²⁹ Arend and Beck, *International Law*, p. 30.

³⁰ Adams, Robert. 'The United Nations and Humanitarian Intervention' in Welsh J M (ed) *Humanitarian Intervention and International Relations*. New York: Oxford University Press, 2004, pp 71-97.

³¹ Adam, Robert. 'The So-Called Right of Humanitarian Intervention.' *Yearbook of International Humanitarian Law*, Vol.3, Summer 2001.

³² *Charter of the United Nations*. Department of Public Information, United Nations, New York.

of enforcement measures under Chapter VII.”³³ The general prohibition on the use of force contained in Article 2(4) is considered to be a rule of *jus cogens*, that is, a peremptory norm of international law from which no derogation is permitted.³⁴

The UN Charter proclaims the protection of human rights as one of its fundamental goals but does not include human rights as a specific ground for intervention in another state. Murphy argues that while respect for human rights is important, neither the Charter, current state practice, nor scholarly opinion conclusively supports the view that there is a right of unilateral, unauthorised intervention to stop or prevent widespread deprivations of internationally recognised human rights and further adds that based on the accepted rules of treaty interpretation, Article 2(4) was meant to be a watertight prohibition against the use of force and any customary right of unilateral intervention which may have existed was extinguished by the United Nations Charter.³⁵ Jackson takes the same line of argument and concludes that consequently “intervention is prima-facie wrong and must then be justified or else it must be condemned”.³⁶ These arguments are however challenged in the preceding paragraphs on the grounds that the UN’s primary purpose is the maintenance of international peace and security.

Contrary to the above and notwithstanding the strong presumption against the use of force in a state or interference in matters considered the domestic jurisdiction of a state, the Charter leaves some provision for humanitarian intervention. The United Nations has a major role as the principal international body for the protection of human

³³ Ibid.,

³⁴ O’Connell, Mary Ellen. ‘The UN, NATO, and International Law After Kosovo.’ *Human Rights Quarterly* 22, 2000, p.58.

³⁵ Murphy Sean D. *Humanitarian Intervention: The United Nations in an Evolving World Order*. Philadelphia: University of Pennsylvania Press, 1996.

³⁶ Jackson, Robert. *The Global Covenant. Human Conduct in a World of States*. Oxford: Oxford University Press, 2000, p.252.

rights. Human rights are considered fundamental and have been proclaimed to be central purposes of the United Nations in the Preamble. Certain fundamental human rights are obligations *erga omnes*, that is, obligations every state is bound to observe vis-à-vis all other states. These would include rights to life, prohibition against torture, genocide, slavery and the principle of non-discrimination. Essentially the protection of human rights was one of the two main *raison d'être*s of the UN.³⁷ Further, The UN includes human rights in its purposes, in Article 1(2) which states "To develop friendly relations among nations based on respect for the principle of equal rights and self determination of peoples, and to take other appropriate measures to strengthen universal peace" and in Article 1(3) which states "To achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."³⁸ Article 55 further specifies that the United Nations shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all."³⁹ The Charter does not address directly the actions to be taken when the fundamental human rights in the above provisions are flouted by a state which would imply that these actions are implicit in the respective provisions.

Humanitarian intervention was not mentioned in the UN Charter at its formulation in 1945 as, at the time, it could not be imagined that a state could employ terror against its citizens. Given that the UN Charter was formulated at a time when conventional aggression was the norm, its provisions appear to inadequately address the types of conflict which are currently more common, namely internal conflicts. It can however be

³⁷ Tesón, *Humanitarian Intervention*, pp. 173-174.

³⁸ *Charter of the United Nations*. Department of Public Information, United Nations, New York.

³⁹ *Ibid.*,

argued that the UN Charter provides some scope for humanitarian intervention under UN Security Council auspices. Under Article 2(7), enforcement measures within states are allowed under chapter VII of the Charter which deals with actions to be taken towards the maintenance of international peace and security. Article 39 provides that the Security Council can take action in cases deemed to constitute a threat to the peace, breach of the peace or act of aggression all of which can accommodate humanitarian intervention.

The promotion and protection of human rights and the maintenance of international peace and security are important aspects of the UN Charter which are significant considerations in humanitarian intervention. Gross violation of human rights constitutes a threat to international peace and security and enables the Security Council to resort to force to protect human rights under Article 39 of the Charter. The prevention of human rights violations is itself also a legal ground for humanitarian intervention.⁴⁰ The Charter thus does have provision for humanitarian intervention in upholding human rights principles and in containing gross human rights violations though this provision is not distinctly clear and may seem controversial at times.

***Jus Cogens* and the Doctrine of Humanitarian Intervention**

There have evolved, in the international system, certain principles which are recognized as fixed. These fall under the term *jus cogens*, or principles from which there can be no derogation. Certain human rights violations to include torture, slavery, and genocide, are *jus cogens*, are illegal under international law, and therefore would not fall under domestic jurisdiction. *Jus cogens* have been codified in various treaties and conventions

⁴⁰ Teson, *Humanitarian Intervention*, 173-174.

and regardless of whether or not a state has ratified them, it is still bound by these principles.

The Universal Declaration of Human Rights (UDHR) has been accepted by all UN member states though not all states have ratified it. Reisman notes that the UDHR is “now accepted as declaratory of customary international law.”⁴¹ Delupis argues that the UDHR has considerable authority and contains rules which are *jus cogens*:

“I submit that a number of rules contained in the Universal Declaration of Human Rights are peremptory norms from which derogation, either by legislation or treaty is not permitted. Furthermore, a number of rules laid down in the conventions on genocide and slavery also have this character and bind third states by virtue of forming part of the general principles of international law.... the Universal Declaration, which does not itself constitute a binding document, lays down rules which, irrespective of whether they are embodied in a binding document or not, are binding as customary international law. No state can rightly believe after the Nuremberg trials that international law, in the absence of treaties, contains no rules which forbid atrocities and genocide.”⁴²

Kutner argues that “Article 2 (7) of the UN Charter which precludes the United Nations from interfering in matters which are essentially within the domestic jurisdiction of any state may not be interposed because the member states have obliged themselves to promote fundamental human rights.”⁴³ This implies that Article 2(7) may not be invoked to stop other states interfering in the domestic matters of a state when fundamental human rights have been violated. Gross violations of human rights are *jus cogens*, their containment would not be interference in internal affairs of a state nor be covered under Article 2(7) of the UN Charter. Accordingly, as gross human rights violation falls under

⁴¹ Reisman, W. Michael ‘Sovereignty and Human Rights in Contemporary International Law’ *American Journal of International Law*, 84, October 1990, p. 867.

⁴² Delupis Ingrid. *International Law and the Independent State*. New York: Crane/Russak, 1974, p. 133.

⁴³ Kutner, Luis. ‘World Habeas Corpus and Humanitarian Intervention’ *Valparaiso University Law Review*, 19, Spring 1985, p. 611.

the concept of *jus cogens*, states that violate it should be prepared for the consequences to include humanitarian intervention.

Human Rights Protection

Human rights are universal and provide the foundational underpinning on which the principle of humanitarian intervention was developed as the basis is the protection of gross human right violations. The World Conference on Human Rights reaffirmed, in the Vienna Declaration, the universality of human rights. The declaration recognized that “the promotion and protection of all human rights is a legitimate concern of the international community.”⁴⁴ Gross violation of human rights, when perpetrated by a state against its citizens, is thus the fundamental legal basis for humanitarian intervention and provides the definition for the concept.

Humanitarian intervention is consistent with the present international legal order. The international legal basis for the doctrine of humanitarian intervention is rooted, more than anywhere else, in customary international law. The concept is also justified under the United Nations Charter, the Universal Declaration of Human rights, the Genocide Convention, the Convention against torture and the Rome Statute of the International Criminal Court. The legality of humanitarian intervention in gross human rights violation is thus justified. It can actually be argued that Article 2(7) of the Charter has never been interpreted by the General Assembly and the Security Council as preventing action by the UN in serious cases of human rights violation. In 1963, the representative of Cyprus in the 6th Committee of the U.N. General Assembly stated that “Article 2 (7) of the Charter has repeatedly been interpreted by the General Assembly as allowing the United Nations

⁴⁴ *World Conference on Human Rights, The Vienna Declaration and Programme of Action*. United Nations Department of Public Information, June, 1993, p. 30.

to intervene in the internal affairs of a state in case of a flagrant violation of human rights."⁴⁵ This argument could be supported by the fact that no state should, under the cover of the principle of non intervention in domestic affairs, commit acts contrary to the peremptory rules of international law. The implication is that, if such acts occurred, it is within the right of the international community to intervene to rectify the situation. Fonteyne asserts that the UN's practice in this area arguably indicates that human rights finally have been removed from the exclusive jurisdiction of states and lifted into the realm of international concern.⁴⁶

Humanitarian intervention represents a situation in which the principle of state sovereignty conflicts with the requirements of universal morality. Universal morality is however overriding, and therefore provides a moral ground to justify intervention. Gross human rights violations cannot therefore be treated as matters of domestic jurisdiction. Humanitarian intervention is morally legitimate when it is shown to be for the common good of humanity. Serious violations of fundamental human rights provide the moral grounds for the international community and individual states to intervene as there is a strict moral duty to intervene when fundamental human rights are violated. Failing to act in the face of gross human rights abuses is morally culpable and blameworthy.

Human rights laws have now been accepted as being universal. Humanitarian intervention is undertaken for the sake of protecting the dignity of persons and the value of their humanity where their governments are grossly violating their human rights. Human rights are necessary to express and exercise humanity and are fundamental to being a person. An appeal to the idea of human dignity makes a moral case for

⁴⁵ U.N. Doc. A/C6/SR806.

⁴⁶ Fonteyne, 'The Customary International Law Doctrine of Humanitarian Intervention', p. 241.

intervention, that is, one that applies universally and unconditionally. Respect for humanity provides a moral basis for humanitarian intervention and thus intervention is morally justified whenever human rights are seriously violated. If intervention to protect human rights is defended on moral grounds, any reference to whether the state against which one acts is dangerous or aggressive is irrelevant.⁴⁷ The very nature of the argument based on the protection of fundamental human rights qualifies the normative status of humanitarian intervention as a requirement of morality and thus a duty.

The protection of human rights is a moral matter that is universally binding and enforceable. Those in favour of treating humanitarian intervention as a duty are nonetheless inclined to treat it as an important duty of charity or beneficence.⁴⁸ Humanitarian intervention is thus a strict duty and states have an obligation to enforce it in the interest of morality. Humanitarian intervention is thus morally acceptable and provides other states with the onus of guaranteeing moral order outside their domestic jurisdiction which underlies the concept of the universality of human rights. The next chapter will identify incidences of gross human rights violations in Somalia between 1978 and 1991, which should have invited humanitarian intervention, and possibly have changed the past and future of Somalia.

⁴⁷ Rawls, John. *The Law of Peoples*. Cambridge: Harvard University Press, 1999.

⁴⁸ Nardin, Terry. 'The Moral Basis of Humanitarian Intervention.' *Ethics and International Affairs*, 16, no. 1, 2002, p. 57-71.

CHAPTER THREE

HUMANITARIAN INTERVENTION IN SOMALIA 1978 – 1991

Background to the Crisis

At independence in 1960, Somalia could be regarded as a model of a nation-state in Africa as it had the characteristics of a common people through a shared language, culture and a 99 per cent Muslim population.¹ Mazrui, in his work *The Africans*, notes that “most other African countries are diverse people in search of a sense of national unity. The Somali were already a people with a national identity in search of territorial unification.”² While these attributes would be beneficial to the process of nation-state building, social integration and coherence and harmony, in Somalia the common religion, shared cultural values and language did not guarantee sustainable social cohesion, stability and peace after independence.

The irony of the Somali tragedy is that on the surface, Somalia appeared to be one of the least vulnerable states to the type of ethnic conflict that has destabilized other African countries, owing to the homogeneity of the Somali people. It was thus unexpected that a seemingly much more coherent, cohesive and homogenous state than most other African states could succumb to ethnic conflict. The events in the following thirty years have shown that a common language, culture, and religion do not suffice to make a stable nation-state as while the Somalis were capable of nationalist emotions, they were not yet fully a nation in the sense of identity.³

¹ Laitin, David and Said Samatar, *Somalia: A Nation in Search of a State*. Boulder, Colorado: Westview Press, 1987.

² Mazrui, Ali A. *The Africans: A Triple Heritage*. Boston: Little, Brown, 1986, p.71.

³ Mazrui, Ali A. ‘From Tyranny to Anarchy’ in Hussein M Adam and Richard Ford (eds.) *Mending Rips in the Sky*. Lawrenceville: The Red Sea Press, Inc. 1997.

A paradox was thus evident in the Somali case between a high emotion of nationalism and a low sense of nationhood. It is apparent that Somalia never developed a sense of nationhood despite enjoying positive factors that would have enhanced it as the nomadic pastoralists remained loyal to their respective clans and sub-clans⁴ than the state. Thus, while the descent by Somalia into desperation has a variety of causes and while some of the causes are recent while others may have deeper historical and sociological reasons, the clan factor remains the single most important factor. Consequently, even the management of government was much influenced by clan factors; the first elected government in Somalia was dominated by clanism to the extent that the running of state affairs was reduced to clan business with the negative effect that by 1969 the government had lost the respect of the majority of its citizens and was consequently overthrown in a coup d'etat.

Major General Mohamed Siyad Barre came to power in 1969 following a successful coup d'etat after nine years of civilian multi party government. The new government was characterised by a total reliance on the clan for governance, an increasing tendency toward extreme harshness, cruelty and murder to maintain itself in power and an aggressive foreign policy based on Somali irredentism. Barre sought national solidarity among all Somalis through the idea that all Somalis could live in one state encompassing the current state of Somalia, the Ogaden region of Ethiopia, Djibouti and the North Eastern Province of Kenya. Thus Barre waged war with Ethiopia in 1977 partly to enhance the irredentist idea and partly to divert domestic attention where clannism threatened to disrupt government activities.

⁴ Cohen Herman J. *Intervening in Africa*. London: Macmillan Press Ltd., 2000.

From the outset, the military regime under Barre abolished all existing constitutional rights and guarantees and replaced them with its arbitrary authority which resulted in horrendous human rights abuses. The dictatorial regime cared only about the maintenance of its power as citizens were prevented from exercising their basic rights while their lives and property were constantly under threat. The national security service was empowered to perpetrate all sorts of injustice: detention, torture, summary execution and political persecution. Citizens were deprived of the right of *habeas corpus* and thus became victims of the most abusive restraints on personal liberties.⁵ Almost the entire population became victims of the abuses of a tyrannical power who saw in any slight opposition, a potential threat to its existence. A national security court, which was independent of the nation's judiciary system, was established under presidential decree in 1970. The court was set up to protect national interest, state security and good governance but it turned out to be protecting the interests of the regime as it was provided with the powers of prosecution and imprisonment without giving the accused the opportunity to seek any legal advice. Economic conditions deteriorated as a result of Barre's rule which was characterised by un-precedented levels of rampant corruption in modern Somali history.⁶

The Barre regime thus established the foundation for the intensity of clan conflicts and the eventual civil war. Like the Somali government after independence, Barre established a network based on nepotism and clan allegiances. Barre employed the policy of divide and rule among clans and sub-clans, magnifying clan distinctions for political ends thereby fuelling factional power struggles as a means of defusing a united

⁵ Metz, Helen Chapin. *Somalia: A Country Study*. Washington DC: The American University, 1993.

⁶ Ali, Ahmed Qassim. 'The Foreign Factor in the Somali Tragedy' in Hussein M Adam and Richard Ford (eds.), *Mending Rips in the Sky*. Lawrenceville: The Red Sea Press, Inc. 1997.

opposition to his rule.⁷ He concentrated power in his hands, cracked down on dissent, weakened the civil service and politicized the military.

Opposition to Barre's rule had thus been weak and divided along clan lines. This allowed the Barre regime to linger on for long despite the wholesale disaffection engendered by the human rights abuses carried out against important lineages of Somali kinship groupings. Human rights abuses were waged first against the Majeerteen clan, then against the Isaaq clans of the north, and finally against the Hawiye, who occupied the strategic central area of the country, including Mogadishu. Finally, following massive human rights abuses, the different clans formed clan based armed resistance to counter the oppression undertaken by the government eventually leading to civil war.⁸

The large quantity of arms that enhanced the Somali crisis was however the legacy of superpower rivalry during the Cold War. Located in the Horn of Africa region, astride the Gulf of Aden, egress of the Red Sea and the Suez Canal, Somalia had a geopolitical importance while conflict within it had regional implications. Laidi observes that during the Cold War, the region witnessed instability due to perceived external interference by the major external powers based on their geo-political strategic needs.⁹ Thus the importance of the Horn of Africa in the strategic calculations of the Soviet Union and United States in the 1970s and 1980s enabled Barre to play the two off against each other in order to amass a substantial arsenal.¹⁰ By the mid-1970s the apex of the Soviet-Somali friendship, Somalia possessed one of the best-equipped armed forces in

⁷ Mariam Arif Gasseem, *Hostages: The People Who Kidnapped themselves*. Nairobi, Kenya: Central Graphics Services, 1994.

⁸ Makinda, Samuel. *Seeking Peace from Chaos: Humanitarian Intervention in Somalia*. Boulder: Lynne Rienner, 1993.

⁹ Laidi, Zaki. *The Super Powers and Africa: The Constraints of a Rivalry, 1960-1990*. Chicago: The University of Chicago Press, 1990.

¹⁰ Jama Mohammed Ghalib, *The Cost of Dictatorship: The Somali Experience*. New York: Lillian Barber Press, 1995.

sub-Saharan Africa.¹¹ In 1977, Barre shifted allegiances, expelled the Soviets, and made way for American military support. By 1980, under American tutelage, Somalia had built up a military force of over 65,000 such that in proportion to its population at the time (six million), the Somali military force was huge by African standards.

The Somali People and Clan Structure

The Somali people, predominantly Muslim with a population of about seven million, are traditionally nomadic herdsman, moving in search of pasture with their camels, cattle, sheep and goats over the semi desert and arid plains of the Horn of Africa. The population includes pastoral nomads, constituting 60 per cent of the population, agropastoralists, agriculturalists, and coastal dwellers.¹² The Somalis are a proudly independent people with a strong sense of ethnic exclusiveness in terms of language and culture. Prior to colonisation, although they shared a common language and the religion of Islam, Somalis did not constitute a state and their un-centralized political organisation was based on a segmentary lineage system in which political identity and loyalty were determined by genealogical proximity.¹³

The clan system has been the substratum of political, social, and economic organization since time immemorial and any political identity was based on clan affiliation.¹⁴ Individual clans were led by traditional clan leaders under clan political units without a central control over all clans until a single state was established after colonisation. During the late nineteenth and early twentieth centuries, the colonialists

¹¹ Makinda, *Seeking Peace from Chaos*.

¹² Abdalla Omar Mansur, 'Contrary to a Nation: The Cancer of the Somali State' in Ali Jimal Ahmed, ed., *The Invention of Somalia*, Lawrenceville, NJ: The Red Sea Press, 1995, p. 107.

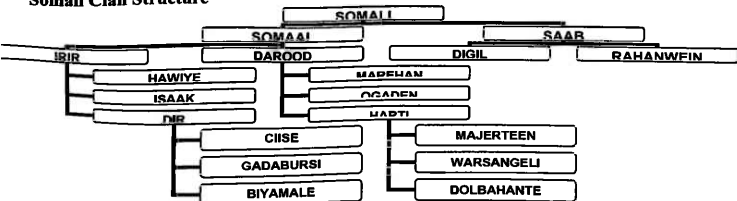
¹³ Lewis, I M. *A Pastoral Democracy: A Study of Pastoralism and Politics Among the Northern Somali of the Horn of Africa*. London: Oxford University Press, 1982.

¹⁴ Sahnoun, Mohamed. *Somalia: The Missed Opportunities*. Washington DC: Institute of Peace Press, 1994.

divided the country into French, British, and Italian Somaliland. French Somaliland became Djibouti, and the British created modern Somalia out of British and Italian Somaliland, but not before ceding valuable Somali territory to its war ally, Ethiopia.¹⁵

In order to understand the Somali crisis, it is important from the outset to understand the Somali clan structure as it has a lot of bearing to both the crisis and politics of Somalia. The Somali speaking peoples are organised into an extensive clan structure that has existed over many years. Clans and the sub-groups within clans are fundamental aspects of life in Somalia and, as such, are critical to understanding the evolution of the social, economic and political landscape. Clans are determined by patrilineal descent and membership can be as large as several hundred thousand members. The clan families have common ancestral origins and they are interrelated through complex networks of social relationships, which extend over clan territories marked with fluid borders, within the national territory. The knowledge of one's genealogy several generations back is an important identity reference for the individual and the clan community.

Somali Clan Structure



Source: Bradbury Mark. *The Somali Conflict: Prospects for Peace*. Oxford: Oxfam GB, 1999.

¹⁵ Abdulsalam M. Issa-Salwe, *The Collapse of the Somali State: The Impact of the Colonial Legacy*. London: Haan Associates, 1994.

The Somali are split into two main groups, the Samaal and the Saab and six primary clans and numerous sub-clans based on descent from a common ancestor. The Samaal who live throughout the country, trace their descent from unions of Arab traders with Somali women. The Samaal include the Irir and Darod groups. The Irir include the Dir, Isaak, and Hawiye clan families. The Darod include the Northern groups (including the Majerteen), the Ogadeni, and affiliated groups. The Saab who live in Southern Somalia, include the Rahanwein and Digil clans.

All Somali groups speak the same language and share the same culture but clan affiliation and descent is regarded as very important. This is because in traditional Somali society, the clan was a social and political unit of organisation and government. Each clan had its own leaders and a council of elders while land was communal property managed under the clan leadership. The council of elders and traditional chiefs, who ensured harmony and sustained peace in the clan communities, defined the rights and obligations of the members and their relations, together with the rights and limitations of neighbouring clans. Clan structures thus emphasize loyalty to and from their members. The process of modernisation transformed the political, moral and spiritual roles of the traditional clan elders and chiefs as they lost both their political roles and social status in their respective clans. Consequently, with state collapse, the society regrouped back into their original clan structures.

Opposition to Barre

The current study begins at the end of the Ogaden war with Ethiopia in 1978 as it is crucial to understanding the genesis of the opposition to Barre's rule. The defeat in

Ethiopia in 1978¹⁶ marked the end of Somali irredentism as the sole unifying factor in Somali politics and political attention was redirected back home. The lost war produced a national mood of depression and destroyed any sense of national unity which was made worse by the consequent refugee influx from Ethiopia into the northern part of the country¹⁷ that forced Somalia to depend on humanitarian handouts for its economic survival. The destabilizing effect of this migration into the territory of the already disaffected Isaaq clan sparked a revolutionary movement culminating in the creation of the Somali National Movement (SNM)¹⁸ that led a decade long civil war against the government. As the organized opposition groups began to emerge, Barre responded by intensifying his political repression and the indiscriminate use of force. The end of the Ogaden War was thus the start of the Somali intra state conflict and eventual state collapse¹⁹ as it led to alienation of the population from the regime.

As the clans took up arms against the government, following repression, Somali society underwent a profound crisis of identity, purpose, and direction that threatened its very existence as the revolutionary regime began to collapse. Barre was increasingly attacked by opponents, including some within the military, as shifting inter-clan coalitions began to erode his ability to maintain a support base.²⁰ Confronted by armed opposition, the regime turned inward skillfully harnessing the limited resources of the

¹⁶ Lewis, I.M. *Understanding Somalia: Guide to Culture, History and Social Institutions*. London: Haan, 1993.

¹⁷ Abdalla Omar Mansur, 'Contrary to a Nation: The Cancer of the Somali State' in Ali Jimal Ahmed (ed.), *The Invention of Somalia*. Lawrenceville, NJ: The Red Sea Press, 1995, p. 112.

¹⁸ Prunier, Gérard. *The Rwanda Crisis: History of a Genocide*. New York: Columbia Univ. Press, 1995.

¹⁹ Lewis, I. M. *Blood and Bone: The Call of Kinship in Somali Society*. Lawrenceville, NJ: The Red Sea Press, 1994.

²⁰ *Ibid.*,

state and taking advantage of clan differences. In a bid to survive at all cost, the regime engaged in gross violations of human rights.

Human Rights Abuses in Somalia

During the 21 years in power, the Barre regime committed atrocities on the Somali peoples causing destruction, retribution and upheaval. Incidents of gross violations of human rights will be highlighted with a view to identifying in retrospect, where humanitarian intervention was appropriate.

With a civil war and armed uprising against the regime by Majeerteen clans in southern Somalia, other clans followed suit. Armed resistance spread to the Isaaq clans in the north. The regime's efforts to suppress Isaaq resistance resulted in the virtual destruction of the urban centres of the north. This was later followed by a massive uprising by the Hawiye clans in Mogadishu and adjacent regions under the leadership of the clan-based United Somali Congress (USC).²¹ Other clan-based resistance groups also sprang up: the Somali Patriotic Movement (SPM) in the south, the Somali National Army in the central region, the Somali Democratic Alliance (SDA) in the northeast, and the Somali Salvation Democratic Front (SSDF) based in the Darod and Majeerteen sub-clans. As the activities of the opposition movements intensified, the government retaliated with brutal reprisals against territories it believed were controlled by the opposition.

It is useful from the outset to define what constitutes gross violations of human rights so as to have a ready check as the various acts in Somalia are narrated. Gross violation of human rights encompasses genocide, state murder, extermination campaigns, enslavement, deportation, torture, rape, sexual slavery, enforced disappearance, and

²¹ Jama Mohammed Ghalib. *The Cost of Dictatorship: The Somali Experience*. New York: Lillian Barber Press, 1995.

apartheid. Genocide is one of the worst moral crimes a government (any ruling authority, including that of a guerrilla group, a quasi state, a terrorist organization, or an occupation authority) can commit against its citizens or those it controls. In 1948 the United Nations proposed and approved the *Convention on the Prevention and Punishment of the Crime of Genocide* (UHCG), and most recently on 1st July 2002, the *International Criminal Court* (ICC) came into force. As a crime, the UHCG defined genocide as the intention to destroy, in whole or in part, a national, ethnical, racial or religious group.²² The ICC accepts this definition, covers all crimes against humanity and subjects individuals regardless of status or rank to prosecution with effect from the date of its coming into force (July 2002).

The Majerteen Coup

The first effective opposition against the Barre regime did not come until April 1978, immediately after the army's humiliating defeat in the Ogaden, when some Majerteen clan officers organized an unsuccessful coup. Some of the coup planners escaped to Ethiopia, where they organized the first opposition movement, the Somali Salvation Democratic Front (SSDF).²³ The movement had a strong following in the central and north-eastern regions and was supported by Ethiopia. The movement provided President Mengistu of Ethiopia with an opportunity to retaliate against Barre for his support for the Western Somali Liberation Movement (WSLF), a Somali outfit which was seeking secession of the Ogaden region of Ethiopia.

Following the unsuccessful coup, Somali politics changed and completely focused on internal conflict and repression. For opposing his regime through the failed coup and

²² *The United Nations Convention on the Prevention and Punishment of the Crime of Genocide*, 1949.

²³ Bradbury Mark. *The Somali Conflict: Prospects for Peace*. Oxford: Oxfam GB, 1999.

in retaliation, Barre organised systematic revenge against the Majeerteen clan in the central and north eastern regions. Many Majeerteen military and civilian leaders were imprisoned while seventeen alleged ringleaders were summarily executed.²⁴ A crackdown followed on innocent civilians of the Majeerteen clan for their increased support for the coup. Barre used the Red Berets, a dreaded elite unit recruited from among the president's Marehan clansmen, against the Majeerteen in the Mudug Region, an action for which he lost the support of other clans.²⁵ The Red Berets, other than killing animals, also systematically smashed the water reservoirs in the area around Galcaio so as to deny water to the Majeerteen sub-lineages and their herds. In May and June 1979, more than 2,000 Majeerteen sublineage died of thirst in the waterless area northeast of Galcaio, Garoowe, and Jerriiban.²⁶ In Galcaio, members of the Victory Pioneers, an urban militia notorious for harassing civilians, raped large numbers of Majeerteen women. The estimated animal loss was 50,000 camels, 10,000 cattle, and 100,000 sheep and goats.²⁷ This was the first major gross violation of human rights as the atrocities were directed to a specific ethnic group.

The Isaaq Rebellion

The continued divisive dictatorship of Barre sparked a series of insurrections that gradually reduced the president's influence over the state. The Isaaq clan occupy the northern portion of the country which constitutes the former British Somaliland. Three major cities are predominantly, Isaaq: Hargeysa, the second largest city in Somalia;

²⁴ Africa Watch Committee, *Somalia: A Government at War with its own People*. New York: Africa Watch Committee, 1990.

²⁵ Sahnoun, Mohamed. *Somalia: The Missed Opportunities*. Washington DC: Institute of Peace Press, 1994.

²⁶ Metz, Helen Chapin. *Somalia: A Country Study*. Washington DC: The American University, 1993.

²⁷ *Ibid.*,

Burao in the interior and the port of Berbera. Formed in London on April 6, 1981 by Isaaq emigrants, the Somali National Movement (SNM) remained an Isaaq clan organization dedicated to ridding the country of Barre. It was started in Ethiopia from where members could launch guerrilla raids into Somalia.²⁸

The Isaaq felt deprived both as a clan and as a region, and Isaaq outbursts against the central government had occurred sporadically since the formation of the union. The SNM launched the first and most serious rebellion in the north through guerrilla attacks in 1988, briefly capturing Burao and part of Hargeysa.²⁹ Government forces, unable to prevent the uprising, unleashed a bloody repression against the civilian population. Using aircraft and heavy weapons, government forces bombarded the towns heavily, forcing the SNM to withdraw and causing more than 300,000 Isaaqs to flee to Ethiopia.³⁰ The regime conducted savage reprisals using methods that were earlier employed against the Majeerteen with destruction and poisoning of water wells and grazing grounds, the indiscriminate use of land mines, the raping of women and the deliberate destruction of livestock, the economic livelihood of the people.

A 1990 report by the Africa Watch Committee estimated that about 50,000 Isaaq were killed by government troops in Hargeisa between May 27 and December 1988. It is estimated that 450,000 Somali's fled to Ethiopia³¹ seeking refuge while an additional 600,000 were internally displaced.³² About 1,000, including women and children, were

²⁸ Lewis, *Blood and Bone*.

²⁹ Metz, *Somalia: A Country Study*.

³⁰ Africa Watch Committee, *Somalia: A Government at War with its own People*. New York: Africa Watch Committee, 1990.

³¹ *Guide to Canadian Policies on Arms Control, Disarmament, Defence and Conflict Resolution*. Ottawa: Canadian Institute for International Peace and Security, 1990.

³² Africa Watch Committee, *Somalia*, 1990.

alleged to have been bayoneted to death.³³ The targeting of the Isaak clan in northern Somalia succeeded in uniting the clan behind the SNM. The genocide, the killing of the members of one ethnic group, and force displacement of the Issak from their territory, was gross violation of human rights which deserved to be countered through humanitarian intervention. Following these atrocities, Amnesty International denounced the systematic human rights abuses by Barre's security forces, and protested the repression.³⁴

Incidentally, the Isaak offensive in 1988 defeated and contained the government troops before intervention by USA which had a base at Berbera. US military assistance valued at about \$1.4 million arrived on June 28 1988 and was used to regain control of the land which had fallen to the SNM.³⁵ US policy appears to have reinforced Barre's harsh retaliation and as a result the SNM and the Isaak clan were badly shaken by the ferocity of the government response.³⁶

Any semblance of Somali political unity vanished under the lethal attacks on the north as ethnic nepotism was marked by criminal vengeance. Thus was born the separatist sentiment that caused the north to break away and declare itself the independent Republic of Somaliland in April 1991. The massacre also marked the beginning of a rapid escalation of violent clashes.³⁷ Despite the government victory,

³³ Prunier, Gerard. 'A Candid View of the Somali National Movement'. *Horn of Africa*, XIII, No 3-4/XIV, 1-2, 1990-1991.

³⁴ Sahnoun, Mohamed M. 'Prevention in Conflict Resolution' in Hussein M Adam and Richard Ford (eds.) *Mending Rips in the Sky: Options for Somali Communities in the 21st Century*. Lawrenceville: The Red Sea Press, Inc., 1997.

³⁵ Schraeder, Peter J. *United States foreign policy toward Africa: Incrementalism, Crisis, and Change*. Cambridge: Cambridge University Press, 1994, p. 160.

³⁶ Lefebure, Jeffery A. *Arms for the Horn, US Security Policy in Ethiopia and Somalia 1953-1991*. Pittsburg: University of Pittsburg Press, 1991.

³⁷ Perlez, Jan, 'Over 300,000 Somalis, Fleeing Civil War, Cross Into Ethiopia,' *New York Times* (New York) 13 August, 1988: p. A1.

disintegration had set in and a host of other insurgencies sprang up, notably the United Somali Congress (USC), based among the Hawiye clan and the Somali Patriotic Movement (SPM) among the Ogaden.

The Hawiye Uprising

The Hawiye occupy the south central portions of Somalia. The capital town, Mogadishu, is located in the country of the Abgaal, a Hawiye subclan. The Hawiye are roughly comparable to the Isaaq in numbers. In the late 1980s, disaffection set in among the Hawiye who felt increasingly marginalized in the Barre regime. In 1989, Hawiye clans in central Somalia formed their own opposition movement, the United Somali Congress (USC) and also established guerrilla bases in Ethiopia. The clan was subjected to ruthless assault and atrocities³⁸ by government forces that were considered comparable in scale to those against the Majeerteen and Isaaq. This was gross violation of human rights as it was directed against a specific community. In undertaking this assault on the Hawiye however, Barre committed an error as he turned his last stronghold into enemy territory.

The Muslims Slaughter

Faced with shrinking popularity and an armed and organized domestic resistance spread across the country, Barre unleashed a reign of terror carried out by the Red Berets by ordering the massacre of civilians. By 1989 torture and murder became the order of the day in Mogadishu. On July 9, 1989, Somalia's Italian-born Roman Catholic bishop, Salvatore Colombo, was gunned down in his church in Mogadishu by an unknown assassin. Barre blamed the killing on Muslim religious leaders in an attempt to discredit rising Islamic sentiments. This led to the arrest of prominent Somali politicians, intellectuals and religious leaders who were accused of being involved in the killing.

³⁸ Somalia: A long-term human rights crisis, *Amnesty International*, 1988.

Then immediately came the July 14 massacre, when the Red Berets slaughtered 450 Muslims demonstrating against the arrest of their spiritual leaders and left more than 2,000 others seriously injured.³⁹

Barre targeted innocent civilians of the Isaaq clan who were living in Mogadishu and its suburbs regardless of their role in the demonstration. On July 15, forty-eight Isaaq civilians were taken to Jasiira Beach west of the city and summarily executed;⁴⁰ a miscarriage of justice and gross violation of human rights. The massacre of the innocent civilians increased public opposition to the government.

The Manifesto Group

In May 1990, as armed opposition spread significantly to other regions of the country, a manifesto signed by 144 well known and moderate political leaders was published in Mogadishu calling for a national conference to reconcile the various movements and ethnic groups.⁴¹ The group blamed the government for the atrocities committed on the people, suggested the abolition of repressive laws as a sign of government sincerity, called for a multiparty system and constitutional changes and also for a national reconciliation conference which would form a caretaker government and prepare for elections. There were some limited diplomatic demarches in support of this move with the US stating that bilateral assistance to Somalia would be suspended until the Mogadishu government demonstrated proper respect for human rights.⁴² The government instead responded by arresting many of the leaders.

³⁹ Metz, *Somalia: A Country Study*.

⁴⁰ Mohammed, Abdi-Nur Hagi. *Anatomy of a Failure: Causes and Consequences of the Somali Tragedy*. Mogadishu: Al Harameyn Printing Center, 1999.

⁴¹ Metz, *Somalia, A Country Study*.

⁴² Ibid.,

An anti Barre demonstration on July 6, 1990 deteriorated into a riot, causing Siad Barre's bodyguard to panic and open fire on the demonstrators where at least sixty-five people were killed.⁴³ Barre sentenced to death the forty six prominent members of the Manifesto Group, the body of 114 notables who had signed a petition in May 1990. During the trial that resulted in the death sentences, demonstrators surrounded the court and activity in the city came to a virtual halt. On July 13, 1990 Barre dropped the charges against the accused. The killing of the sixty five people and jailing of the manifesto group are human right abuses as they interfere with the political freedom of individuals but does not constitute gross violation of human rights that may demand humanitarian intervention. If the target was on a specific ethnic or religious group which it was not, then would have been a case for humanitarian intervention.

UNIVERSITY OF NAIROBI
EAST AFRICANA COLLECTION

In 1990, the SNM and USC took advantage of Barre's weakness and launched increased guerrilla attacks on government facilities including Mogadishu, the capital.⁴⁴ The demoralised government forces protecting Mogadishu could not contain the resistance and the town fell to the warlords. Consequently, on 27 January, 1991 the government collapsed as Barre fled Mogadishu with his supporters and established a base in the south-western region of Gedo, in Somalia.⁴⁵ Since the fall of the Barre regime in January 1991, Somalia has been without a central government.

Inter-Clan War

In November 1991 full-scale war over Mogadishu began in earnest and lasted for four months. Inter-factional fighting in the capital, Mogadishu, and the south left an estimated

⁴³ Ibid.,
⁴⁴ Africa Watch Committee, *Somalia: A Government at War with its own People*. New York: Africa Watch Committee, 1990.

⁴⁵ United Nations Department of Public Information. *The United Nations and Somalia: 1992-1996*, New York, 1996.

30,000 civilians dead by March 1992. Humanitarian organisations, mainly UNHCR, and human rights groups believed that at least one million of the estimated eight million Somali population fled to neighbouring countries, with another estimated 1.7 million people fleeing to other Somali regions (internally displaced persons).⁴⁶ Somalia was beset by inter-clan warfare, banditry, and famine. As the clan war progressed, minority communities were killed, raped and forcibly expelled by the militia of clan-based factions.

In May 1992, after twice failing to regain power, Barre was finally defeated by a coalition of rival factions led by Aideed and fled to Kenya. In a meeting in Geneva in 1992 Mohamed Sahnoun, then Special Representative of the Secretary General for Somalia, indicated that the best opportunity for a humanitarian intervention in Somalia was between January 1991 when Barre was ousted from power and November 1991 when the two groups of Aideed and Mahdi fought for Mogadishu.⁴⁷ This was indeed a good opportunity as Somalia lacked a central government and gross violations of human rights were committed by all factions on the people in their struggle for power and territorial gain. In addition, the warring groups in Mogadishu had not consolidated enough strength at the time, to pose a challenge to a humanitarian intervention force.

Who Could Have Intervened In Somalia

Somalia could have received humanitarian intervention from a number of sources which could be either multilateral by a group of states or unilateral by a single state. One source

⁴⁶ Ahmed, I. and Green, R. H., 'The heritage of war and state collapse in Somalia and Somaliland'. *Third World Quarterly*, 20 (1): 1999, pp, 113-27.

⁴⁷ Sahnoun, *Somalia: The Missed Opportunities*.

could have been by fellow African Countries.⁴⁸ This was attempted earlier in Liberia and Sierra Leone under the Economic Commission of West African States (ECOWAS specifically its military component ECOMOG) though these were general intervention to bring political order as opposed to humanitarian intervention in gross violations of human rights.

An African force mandated under the OAU (now AU) and composed of any member states of the Organisation or a single state may have been an option for humanitarian intervention. Most African states could however not undertake unilateral humanitarian intervention in Somalia at the time due to their commitment to territorial integrity and non interference in the domestic affairs of other states as buttressed by the OAU's adoption in 1964 of the principle of *uti possidetis, ita possideatis*: 'as you possess so you may possess' which provided that borders inherited at independence should not be interfered with and thus condemned interference in the internal affairs of other states. The non interference norm in the OAU Charter has however since been replaced. Article 4(h) of the AU Constitutive Act allows for intervention in situations of grave crises namely: war crimes, genocide and crimes against humanity.⁴⁹ The OAU could not however also provide assistance largely due to the desperate economic conditions of most of its members.⁵⁰

A second possible humanitarian intervention could have come from the Organisation of Islamic Conference (OIC) or the League of Arab States. Somalia was a member of both organisations. As the Somali people have been very close to the Arab

⁴⁸ Mazrui, Ali A. 'From Tyranny to Anarchy' in Hussein M Adam and Richard Ford (eds.) *Mending Rips in the Sky*. Lawrenceville: The Red Sea Press, Inc. 1997.

⁴⁹ African Union. *Constitutive Act of the African Union*, Article 4(h).

⁵⁰ Makinda, Samuel. *Seeking Peace from Chaos: Humanitarian Intervention in Somalia*. Boulder:Lynne Rienner, 1993.

world culturally, religiously and economically over the centuries, humanitarian intervention from the Islamic and Arab world would have been appropriate. The OIC and the League of Arab States attempted to bring stability to the country through negotiations but failed.⁵¹ As they were responding to gross violations of human rights, the situation did not therefore need negotiations but humanitarian intervention.

The third intervention could have come from the United Nations. The UN, under whose umbrella the Genocide Convention was adopted in 1948, had a major responsibility to intervene to avert the genocide and gross violation of human rights. A multinational task force under the United Nations could have served the purpose.

⁵¹ Fawn, R. et al. *International Community after the Cold War: Anarchy and Order Reconsidered*. Basingstoke: Macmillan, 1996.

CHAPTER FOUR

HUMAN RIGHTS ABUSES DURING STATE COLLAPSE (1991-2004)

Background

Following intensive fighting by the opposition forces, Siyad Barre deserted Mogadishu in early 1991 and took refuge in Gedo region in the southwest (the President's Marehan sub-clan homeland), thus bringing down the government and an end to his rule.

Consequently, the Somali state collapsed with the disintegration of the state into civil war and the establishment of various warlord controlled zones.

Somalia was a collapsed state. A state is said to have collapsed when it no longer performs the three functions of a state as the authoritative political institution controlling a recognized territory namely sovereign authority, in the sense of being the accepted source of identity and the arena of politics; tangible organization of decision-making and symbol of identity and finally the guarantor of security for the population in its territory.¹ State collapse means that these intertwined basic functions are no longer performed.

There is a breakdown of governance, law and order and power falls into the hands of those with the physical means to fight for it and impose their particular demands namely the warlords, their militias, their financial backers and criminals.

With the collapse of the government, Somalia retained only a symbolic presence in a seat at the United Nations which remained unoccupied till the establishment of the Transitional National Government (TNG). The post-Barre political stalemate, lack of a government and continuous clan battles, added to Somalia's humanitarian tragedy thus

¹ Zartman William, I. *Collapsed States: The Disintegration and Restoration of Legitimate Authority*. Boulder: Lynne Rienner Publishers, 1995.

creating the conditions for an escalating cycle of political violence and civil strife leading to gross violations of human rights by various warlords and militia along clan lines.

The United Somali Congress (USC) captured Mogadishu on Barre's departure as the state disintegrated into clan-based political violence and civil war² with power and leadership drifting to local communities and sub clan level leaders.³ Armed bandits under the authority of local warlords occupied the power vacuum created by the government's collapse. Thus in the absence of a government, power was in the hands of those with guns,⁴ and in a country that had been the recipient of foreign military aid, there was no shortage of arms. The civil war and anarchic milieu so created led to massive human rights abuses by clan based armed groups through factional and clan persecutions leading to displacement, and destruction of property and livelihoods.

The UN deployed to Somalia in 1992 and finally withdrew in 1995 with little achieved in terms of re-establishing peace, disarming armed factions, reconstructing a central government, or ensuring respect for human rights.⁵ According to the UN Secretary General, this was the first UN operation to be withdrawn by the Security Council before completing its mission.⁶ This chapter will capture gross violations of human rights where humanitarian intervention would have been appropriate.

The War in the Collapsed State

In late 1990 a shaky coalition of the combined opposition forces converged on Mogadishu, ousted Barre and captured the capital. After Barre fled the country, however,

² Drysdale, Johan. *Whatever happened to Somalia*. London: Haan Associates, 1994.

³ Clarke, Walter. 'Failed Visions and Uncertain Mandates in Somalia,' in Walter Clarke and Herbst Jeffrey (eds.), *Learning from Somalia: The lessons of Armed Humanitarian Intervention*, Boulder: Westview, 1997.

⁴ *Ibid.*,

⁵ United Nations Department of Public Information. *The United Nations and Somalia: 1992-1996*, New York, 1996.

⁶ Report of the Secretary General. *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa*, S/1998/318/37 ILM (1998) 913, para 31.

the coalition could not hold leading to the outbreak of conflict and violence between clan factions and an anarchical situation.⁷ Clan competition for power and the desire to settle old scores commenced. One faction of the USC headed by Ali Mahdi Mohammed formed an interim government without consulting other USC factions or other opposition groups.⁸ Civil war immediately broke out with different clan factions fighting for control of government and different parts of the state.

In the northwest, the Somali National Movement (SNM) forces defeated the government army and declared independence for Somaliland from the rest of Somalia, within the borders of the former British Somaliland Protectorate. In the South, the USC split into two warring factions, one led by interim President Ali Mahdi Mohammed and the other by the USC military wing leader, General Mohammed Farah Aideded. Chaos prevailed in the absence of an internal mechanism capable of restoring law and order or a mediating body that could bring the parties into some sort of dialogue.⁹ Since then, Somalia has been without a functioning government.

By mid 1991, much of southern and central Somalia had slipped into anarchy, following intensified clan and sub clan fighting with areas in and around Mogadishu becoming war zones. It is estimated that between mid-November 1991 and February 1992, 1,200 people were killed or died of injuries per week, while another 2,500 were surviving wounded with casualties reaching 41,000 at the end of the period.¹⁰ A lot of the population was internally displaced or fled Somalia to neighbouring countries. By

⁷ Perlez, Jane, "Factional Fighting in Somalia Terrorizes and Ruins Capital," *New York Times*, New York, 8 December, 1991, p. A1.

⁸ Makinda, Samuel. *Seeking Peace from Chaos: Humanitarian Intervention in Somalia*. Boulder: Lynne Rienner, 1993.

⁹ Cohen, Herman J. *Intervening in Africa*, London: Macmillan Press Ltd. 2000.

¹⁰ Leaning, Jennifer. 'When the System Doesn't Work: Somalia 1992', in Kevin M. Cahill, (ed.), *A Framework for Survival: Health, Human Rights and Humanitarian Assistance in Conflict and Disasters*. New York: Basic Books and the Council on Foreign Relations, 1993, p.109.

February 1992, the military confrontation had reached a stalemate with Mogadishu cleaved in two each controlled by the major warlords, General Aideed and Ali Mahdi.¹¹

Following the stalemate in Mogadishu and with the airport, seaport and road network controlled by the clan militia, international intervention to feed the hungry and restore some form of normality was necessary. Calls for military intervention, in support of humanitarian assistance, intensified over the course of 1992. As such intervention could best take place under UN auspices,¹² the US accepted to dispatch troops on a humanitarian assistance operation under a UN mandate.

HUMAN RIGHTS ABUSES IN THE POST BARRE PERIOD

Antagonism between the different clans dominated the Somali society as each clan struggled to retain the territory it then possessed and endeavoured to obtain more through the use of force. The forcible takeover and consolidation of territory by rival groups, was accomplished through indiscriminate killings, selective assassinations and executions and the use of rape as weapons of terror and intimidation.

Different forms of gross violations of human rights thus took place in Somalia after the collapse of the state. The worst atrocities actually occurred immediately after the collapse of the state between 1991 and 1992 as the factions were struggling to take over power immediately after Barre's departure. There were acts of deliberate killing solely because of membership in a rival clan, sub-clan or minority group; killing through the indiscriminate use of force by armed agents who disregarded the safety of opposing clan civilians; rape because of clan or minority identity; people forcibly expelled from a town or a region, stripped of their goods and cut off from their livelihood; forced to flee their

¹¹ Ibid., p.107.

¹² Ibid.,

their homes through constant threats to life and security by members of rival clans and restrictions in the right to reside in certain areas because of ones clan identity. There was evidence of genocide, arbitrary killings, rape, torture, and ethnic cleansing in Somalia which amount to gross violation of human rights, some of which are narrated below.

Genocide and Massacres

Massacre accounts for the majority of the civilian dead in Somalia after the collapse of the state. The major of atrocities were committed in Mogadishu. Indiscriminate shelling by the rival forces of Ali Mahdi and General Aideed reached its extreme between November 1991 and March 1992, when shelling by artillery killed at least 14,000 people and injured some 27,000, the majority being civilians.¹³

A clash in September 1994 between Ali Mahdi's Abgal forces and a rival leader of the USC, Mohammed Kanyare who headed the Murosade faction, in the neighborhoods of Bermuda and Medina in South Mogadishu illustrated the abuses of human rights through the indiscriminate use of force. Kanyare, who lived in Bermuda, in Somalia, had opened contacts with Aideed.¹⁴ Fighting broke out between Murosade and Abgal militias and soon spread to Medina. Abgal forces apparently responded after Kanyare had brought in militia and heavy weapons into the area and received the support of Habr Gedir militia forces. Heavy weapons were reportedly used indiscriminately, without concern for the protection of civilians, and the looting and burning that followed the fighting reportedly followed strict clan lines.

¹³ Africa Watch (now Human Rights Watch/Africa). 'Somalia-A Fight to the Death'. *Human Rights Watch Short Report*, New York, February 13, 1992.

¹⁴ *Human Rights Watch/Africa*, 'Somali Faces the Future: Human Rights in a Fragmented Society', Vol. 7, no.2, April 1995.

As they were being pushed out of Medina, the Murosade fired a mortar into the market killing ten civilians. The Murosade were finally driven out of Medina and the front shifted to Bermuda, where the Abgal occupy the majority of the area. The Murosade burnt and looted most of the Abgal houses in the Murosade controlled area of Bermuda and only spared nine Abgal houses by reason of inter-clan marriages.¹⁵

In another occurrence, the USC organised and armed vigilantes to systematically carry out indiscriminate massacre of anyone who was identified as Darod.¹⁶ This act was apparently justified on the basis of Barre's clan identity and naively on the belief that a Darod hegemony had oppressed others since time immemorial. Apparently these tragic deeds were being carried out under the political programme of the USC, an organisation that claimed to have founded itself on "restoring human rights and democratic liberties for Somali citizens, and on establishing democratic systems and institutions."¹⁷ This was followed by mass displacement of civilians who became refugees in neighbouring countries or moved to other regions to be internally displaced persons. This wholesale clan killing and the ensuing exodus, followed by the deliberate expropriation of property and land, was gross violation of human rights.

All these incidents, conducted by different clans at different times, qualify as gross violations of human rights. The victims were in most instances innocent civilians who happened to be from the opposite clan and who may not necessarily have been directly involved in the clashes. These acts justified humanitarian intervention.

¹⁵ Ibid.,
¹⁶ Samatar, Ahmed. 'The Curse of Allah: Civic Disembowelment and the Collapse of the State in Somalia', in Ahmed I Samatar (ed.) *The Somali Challenge: From Catastrophe to Renewal?* Boulder, Colorado: Lynne Rienner Publisher, 1994.
¹⁷ Compagnon, Daniel. The Somali Opposition Fronts: Some Comments and Questions. *Horn of Africa Journal*, XIII: 1&2, 29-54, p.41.

Arbitrary/Extrajudicial Executions

Extrajudicial execution was a political tool to eliminate particular individuals within certain ethnic communities. The execution site was Mogadishu's Red Square. Political murder of community leaders was common and was sometimes motivated by efforts at reconciliation led by traditional clan leaders as warlords aimed to preserve their control by disrupting inter-clan reconciliation. In February 1995, a sultan and nine other Degodia people were seized and slaughtered by Habr Gedir militia, apparently for having sought to promote reconciliation with other subclans.¹⁸

In December 1992, a warlord Col. Ahmed Omar Jess, a member of the Ogaden subclan, sent his forces in a house to house search in the southern port of Kismayu, to seize and kill prominent members of the Harti subclan. Human Rights Watch received the names of 126 clan elders, religious leaders and others from the Harti community who were reportedly killed in Kismayu during this period.¹⁹

Ethnic Cleansing through Forced Displacement

Killings and forced displacement by reason of one's clan identity had been a regular feature of Somali society. The expulsion of civilians from rival or weaker communities was an objective of clan-based militias. Even at the height of UNOSOM's military presence in Somalia, operations by competing warlords resulted in the expulsion of members of other clans from whole territories. Those displaced were those who presented a military or political challenge to the superior clan.

¹⁸ *Human Rights Watch/Africa*, 'Somali Faces the Future: Human Rights in a Fragmented Society', Vol. 7, no.2, April 1995.

¹⁹ *Human Rights Watch/Africa* "Somalia: Beyond the Warlords; The Need for a Verdict on Human Rights Abuses," *A Human Rights Watch Short Report*, vol. 5, no. 2, 1992, p. 10.

In April 1994, longstanding rivalry between the Hawaadle and Habr Gedir subclans led to an outbreak of fighting in South Mogadishu that illustrates these divisions of society.²⁰ After fierce clashes, Gen. Aided's Habr Gedir militia won. The defeated Hawaadle were expelled wholesale from the city. The Habr Gedir militia went after civilians throughout South Mogadishu, very specifically targeting Hawaadle households. Many Hawaadle were pulled out of their houses, killed, and their bodies displayed in public as a warning to others. Ninety-eight percent of the Hawaadle in South Mogadishu were displaced from their homes,²¹ and the expulsion and summary executions carried out at that time, represent a clear case of ethnic cleansing and evidence of gross violations of human rights. This clearly justified a case for humanitarian intervention.

The displaced were mainly members of minority ethnic groups or members of these communities in areas disputed between more powerful groups. A pattern of raiding, in order to expel communities from the land, has been the frequent context of clan-based murder, rape, and terror. In the civil war of 1991-2004, raiders frequently stripped whole communities of the very means of survival destroying wells and looting or destroying food stores and livestock thus interfering with the people's livelihood. In December 1994, the UN reported that there were an estimated 350,000 people displaced within Somalia and another 600,000 Somali refugees in Ethiopia and Djibouti who needed assistance.²²

²⁰ Prendergast, John. *The Gun Talks Louder Than the Voice: Somalia's Continuing Cycles of Violence*, Washington, D.C.: Center of Concern, July 1994, p.8.

²¹ *Ibid.*,

²² Barbara Crossette. 'Somalia Aid Groups Seek Help as U.N. Leaves'. *New York Times*, December 23, 1994.

Rape and Sexual Abuse

Rape and sexual abuse of women by armed men of rival clans' militias or bandits has been a persistent and endemic feature of the Somali conflict.²³ Women, being among the hundreds of thousands of displaced peoples, and others who lack the protection of powerful clan structures, were particularly vulnerable.

The problems of women in Baidoa need mention. The enormous toll of famine and war that peaked in 1992 had Baidoa, in Bay region, as its virtual epicentre, with women and children predominant among the dead. Of the women who survived, many were displaced by the conflict. Most men left their families when the war started either to run away because men were the main targets or to join the fighting; women and their children were unable to run and thus remained in Baidoa becoming vulnerable to the militia. Rape was a tactic of war used by all the militias, throughout.

2003 was a critical year for young girls who were targeted for rape and killing as a result of clan disputes in Baidoa.²⁴ Sexual abuse reached alarming proportions as women and children were taken as sex slaves and at the mercy of the protagonists. In Somalia, many sexual abuses are not reported by the victims for fear of loss of honour or infamy thus the reported cases are fewer than actual ones.

Who Should Have Intervened

The continuous conflict and absence of any formal government in Somalia after Barre's departure was a recipe for gross violations of human rights by the militia. All international political organisations, including foreign embassies and UN organisations, left Somalia on the fall of the Barre regime and intensification of the inter clan fighting

²³ Human Rights Watch/Africa, 'Somali Faces the Future: Human Rights in a Fragmented Society', *Human Rights Watch Vol. 7, no.2*, April 1995.

²⁴ 'Position on the Return of Rejected Asylum-Seekers to Somalia.' *UNHCR Report*, 20/01/2004, p.23.

thus abandoning the state to its fate. Only humanitarian organisations were left to work in appalling conditions where they employed armed guards for their protection and delivery of aid to communities.

Being a collapsed state, and with gross human rights violations due to the prevailing anarchy, the Somali people required foreign intervention. Under the circumstances, and in the face of rampant gross human rights violations, any international organisation or state/s could have undertaken humanitarian intervention in Somalia on Barre's departure or immediately thereafter. However, in the immediate post-Cold War period and until mid 1992, Somalia like most African states, suffered benign neglect by Western powers partly due to other important events that were taking precedence on the international scene.²⁵ Changes in the international political climate, especially the end of the Cold War, the revolutions in Eastern Europe and the Gulf War shifted attention away from Somalia. The attention of the western world was on the Iraqi invasion of Kuwait and when this was over, the focus shifted to the breakdown and disintegration of the Soviet Union. In addition, outside the context of the Cold War, Somalia was of negligible strategic value to the major powers.

Regional and international organisations could have initiated humanitarian intervention. Somalia was a member of the Arab League, the OIC, the OAU and the UN. "It is generally assumed that regional organisations are more knowledgeable about the causes of conflict and that they are also likely to be more sensitive to the issues at stake, but the efforts of the OAU, Arab League and OIC in the Somali issue have been abysmal".²⁶ Some of these organisations had neither the capacity nor willingness to

²⁵ Makinda, Samuel M. *Seeking Peace from Chaos*. Boulder: Lynne Rienner Publishers, 1993, p. 14.

²⁶ *Ibid*, p. 84.

assist. The OAU could not intervene due to its Charter restrictions that prevented member states from interfering in domestic matters of a sovereign state.

The Arab League and the OIC which include oil rich nations, could not however intervene as they were preoccupied with problems arising from the 1991 Gulf War.²⁷ Both organisations, through their respective Secretary-Generals, requested the warring factions to stop fighting but did not consider undertaking humanitarian intervention.

The priorities of the UN in the area of international peace and security are largely determined by the permanent members of the Security Council. The UN was very slow in responding to Somalia because the major powers had their interests elsewhere. The UN was divided between restoring the sovereignty of Kuwait with the US as the lead nation and the collapse and restoration of peace in the Federal Republic of Yugoslavia which was being spearheaded by the European Union. In the absence of a lead nation to pursue the Somalia agenda, the UN totally neglected the state. The UN was also partly reluctant to intervene because the total collapse of government structures in Somalia and the behaviour of warlords made it extremely difficult to assist as the security situation had deteriorated considerably. Individual major nations in the west were also preoccupied with the international events and could not accommodate Somalia as a priority²⁸ while African states were mainly handicapped by economic hardships. It is in view of this that the only intervention possible could only be undertaken by the USA which promptly responded through UNITAF, which even then, was only humanitarian assistance.

In 1992, as most of the Somali population were cut off from relief supplies and faced starvation, it was feared that of the 4.5 million Somali population south of the

²⁷ Ibid.,

²⁸ Ibid.,

disputed territory of Somaliland, one-third were at serious risk of death from starvation.²⁹ This was exacerbated by a severe drought that affected the area in 1991-1992, at the height of the civil war, which saw the death of 300,000 to 500,000 people and another three million suffering from the famine.³⁰ As the situation deteriorated, there was a discernible pattern in the UN responses as a series of resolutions were passed, subsequently deemed ineffective, and then replaced by new ones and spanned a range of options, from a complete weapons embargo to use of force in humanitarian assistance.³¹

In December 1992, the US led Operation Restore Hope was launched with a mandate of creating a secure environment for the UN to provide humanitarian relief and promote national reconciliation and economic reconstruction. Operation Restore Hope and subsequent actions by the United States and the United Nations stabilized the situation in the south. Starvation was ended and hostilities were decreased in the state. The exception was Mogadishu where clan based fighting continued. As negotiations with the warlord had proved useless, human suffering could be relieved only through humanitarian intervention³² which was unfortunately not undertaken.

The UN forces withdrew from Somalia in March 1995 by resolution 954 bringing an end to the UN operation in Somalia.³³ The UN operation in Somalia was humanitarian assistance all through. Humanitarian intervention in support of human rights abuses

²⁹ 'United Nations Operation in Somalia I and II (UNOSOM I and II),' *The Blue Helmets, A Review of United Nations Peacekeeping*, Third Edition. New York: United Nations Department of Public Information, 1996,

³⁰ Ismail Ahmed, 'Understanding Conflict in Somalia and Somaliland,' in Adebayo Adedeji (ed.), *Comprehending and Mastering African Conflicts: the Search for Sustainable Peace and Good Governance*. London: Zed Book, 1999, p. 246.

³¹ Weiss, Thomas G et al. *The United Nations and Changing World Politics*. Boulder: Westview Press, 1997.

³² *Ibid.*

³³ Malanczuk, P. *Humanitarian Intervention and the Legitimacy of the Use of Force*. Amsterdam: Het Spinhuis, 1996.

should have been the preferred option from the outset in the UN involvement in Somalia; alternatively a multi-track approach between humanitarian intervention and assistance would have been a possible course of action. An even better approach would have been a three pronged strategy planned in a sequel with a view to addressing the entire spectrum of the problem; conduct humanitarian intervention in gross violations of human rights, provide escorts for relief food to the needy people spread across the country and undertake political reconciliation and reconstruction. The UN failed as it only came to secure routes for delivery of aid to the needy thereby in essence supporting the clan fights by providing food for the armed groups. The UN operation was thus purely humanitarian assistance and apparently, at no point in the conflict in Somalia did the UN include humanitarian intervention in any of its resolutions on Somalia. Human rights abuses thus continued unabated by the various warring factions. The next chapter will provide a critical analysis of humanitarian intervention in Somalia.

CHAPTER FIVE

A CRITICAL ANALYSIS OF HUMANITARIAN INTERVENTION IN SOMALIA

Introduction

As a result of gross human right abuses perpetrated on the Somali people by the government and the clan militia, a lot of lives were lost under the Barre rule and thereafter following state collapse and the civil war. The military dictatorship survived and prolonged its reign of terror with the help of the then superpowers (USA and USSR) who provided political, economic and military support. After the end of the Cold War and the eventual ouster of the dictatorship, Somalis sunk into chaos because of the failure of the opposition movements to establish a formula for the reconstruction of the state. The state is still in a state of chaos and anarchy prevails as the clans struggle for power. Human rights abuses continue unabated and not much has been done to contain the situation.

Having addressed the theoretical and legal underpinnings with regard to humanitarian intervention and laid out the relevance of such intervention in Somalia in the preceding chapters, the purpose in this chapter is to offer a critical appraisal and analysis of humanitarian intervention in Somalia.

Defining Humanitarian Intervention

Some writers¹ have referred to the US and UN action in Somalia as humanitarian interventions while it does not qualify to be one. In genuine humanitarian intervention, the objective of the intervening state must essentially be limited to the protection of human rights in the event of gross violations by the government. The two interventions in Somalia by the USA and UN were not undertaken to arrest gross human rights violations

¹ Makinda, Samuel M. *Seeking Peace from Chaos*. Boulder: Lynne Rienner Publishers, 1993.

but to allow for the distribution of relief aid to the starving population which does not qualify as humanitarian intervention. The only relevance or resemblance to humanitarian intervention is that both operations were undertaken without seeking consent from the parties to the conflict which is a major element of such operations.

The Somalia experience raises important issues relating to humanitarian intervention hence the need for a better understanding of the term and how it can best be undertaken to achieve the desired results. In order to avoid misinterpretation with other humanitarian operations, humanitarian intervention should be understood as operations that entail coercive military interference in the internal affairs of a state with the purpose of addressing massive human rights violations or relieving widespread human suffering perpetrated by the government on its people and undertaken without the consent of the state responsible for the heinous acts.² Humanitarian intervention will only be applied when there is gross violations of human rights as in genocide and large scale loss of life which is the product either of deliberate state action, or state neglect; or large scale ethnic cleansing, whether carried out through killing, forced expulsion or acts of terror. The Somali case, both under Barre and thereafter meets all these requirements and was therefore a case for humanitarian intervention.

Not all interventions on humanitarian grounds are humanitarian intervention just as not all Chapter VII operations are humanitarian intervention. Thus an authentic humanitarian intervention in Somalia would not have concentrated simply on offering humanitarian assistance, although that could have been one of its subsidiary purposes, or on seeking a political settlement to the dispute. Rather, it would have been predicated on

² Murphy D Sean. *Humanitarian Intervention: The United Nations in an evolving World Order*. Philadelphia: University of Pennsylvania Press, 1966.

a judgment about perpetrators and victims in the war, and would have been avowedly devoted to restraining the perpetrators of human rights abuses while protecting the victims. Apparently, the UN did not at no point in the Somali conflict include humanitarian intervention in any of its resolutions on Somalia despite having undertaken successful humanitarian interventions in the past in different regions. Human rights abuses thus continued unabated by the various warring factions. Good examples of past humanitarian interventions conducted by the UN are the operations in northern Iraq to establish safe havens for Kurds from Saddam Hussein's brutality and the operation in Bosnia to prevent ethnic cleansing by the Serbs against Muslim and Croat peoples.

It has been noted that the OAU and its member states failed to intervene in Somalia due to the principle of non intervention in the internal affairs of states. The Constitutive Act of the AU now allows for humanitarian intervention in African states in the event of gross human rights violations. The biggest challenge for the AU and other likely interveners, however, will be the determination of a threshold that is unbearable as to be considered appropriate for humanitarian intervention so as to avoid likely abuse of the provision. Thus, some guidelines are necessary that can be used to determine unacceptable thresholds in an impending or ongoing violation of human rights. Such substantive guidelines or criteria would give an indication of the existence of gross violations of human rights and attract likely humanitarian interveners. In all, as gross violations of human rights must be seen to have occurred through substantive evidence before the employment of humanitarian intervention, the unacceptable threshold should therefore be objective as opposed to being subjective. It is important that both the decision to intervene and the conduct of the humanitarian intervention are subject to

international regulation so that the willingness to act can be guided, legitimate and increasingly effective. Most importantly however, humanitarian intervention should be driven by altruistic purposes as opposed to national interests.

Another major issue arising from the Somali case is that while there was a connection between human rights abuses and the threat to international peace and security in Somalia, the main rationale for UN action was still the traditional threat to peace posed by the humanitarian crisis and breakdown of government. Gross human rights abuses were thus not classified as a threat to international peace despite the human suffering and its other effects like refugee spill-over to the neighbouring states. On a positive note however, as the United Nations will remain a key actor in humanitarian intervention with the Security Council as the arm that approves UN action, it is necessary for the Security Council to now include gross violations of human rights in the list of issues that pose a threat to international peace and security so as to solicit immediate action either by the UN or any unilateral actor. It should however be noted that due to its unilateral character, humanitarian intervention need not necessarily be limited to Security Council authorisation as it can be undertaken unilaterally by a group of states or by an individual state in the event of gross human right violations.

Humanitarian intervention would not be employed to ensure basic human rights. In the same token, the observance of democratic ideals and the consequent use of force to ensure democracy is not a justification for humanitarian intervention. Thus while democracy may ensure and promote the observance of human rights, humanitarian intervention cannot be employed to enforce or restore democracy. In gross violations of human rights however, humanitarian intervention may bring about regime change. For

the case of Somalia, this could have happened under Barre's rule during the massacres of the Isaak, Hawiye and Majerteen when gross human rights violations were applied on these communities.

Humanitarian Intervention or Humanitarian Assistance

United Nations actions in Somalia were not humanitarian intervention but humanitarian assistance. UNITAF and UNOSOM I and II, had the task of ensuring that relief supplies reached the civilians in and around Mogadishu and had no mandate to intervene in gross human rights violations. Thus fighting continued unabated with increases in gross human rights violations. Thus mass starvation was averted, but human rights abuses and overall peace remained elusive.

In this connection, the international community's activities in Somalia first with UNITAF (United Nations Task Force) and later with UNOSOM both of which were termed as humanitarian intervention but which were humanitarian assistance, should have adopted a different approach. Makinda misses the point when he indicates that "the US led Unified Task Force of about 37,000 troops from more than twenty nations was the first humanitarian intervention force in UN history."³ This was not a humanitarian intervention but assistance as the purpose was to provide security to humanitarian supplies to ensure food and other items reached those who needed it most. It did not specifically address gross violations of human rights which were rampant in the country at the time.

In retrospect, the United Nations and United States thus undertook operations that saved many lives in Somalia but did not result in a desirable outcome. Much more lives would have been saved had a humanitarian intervention been undertaken. It is quite

³ Makinda, Samuel M. *Seeking Peace from Chaos*. Boulder: Lynne Rienner Publishers, 1993, p. 15.

evident therefore that in Somalia, despite the gross violations of human rights, humanitarian intervention was never given due emphasis throughout the period of the US or UN intervention. The mandate therefore at no point in time addressed human rights violations. The lesson for the future is that where the international community intends to act in gross violations of human rights, such intentions must not be implied but be clear, credible and constantly communicated for it to be effective. For Somalia, such was never the case with respect to humanitarian intervention.

Humanitarian intervention to contain gross violations of human rights perpetrated by a government on its people should have been employed in the first instance followed by humanitarian assistance. The lesson is that in a collapsed state, there is need for humanitarian intervention to contain gross human rights abuses perpetrated by the government on its people or perpetrated by whatever authority is in-charge in the absence of a government. Such action will have the added benefit of providing some order, sanity and security which may be supplemented by the provision of relief supplies through humanitarian assistance. In future, humanitarian assistance as in Somalia should not be undertaken before some guarantee of human rights as when employed alone it has the additional problem of prolonging the conflict by becoming a source of relief supplies for the warring factions.

Humanitarian Intervention and Sovereignty

This study has noted that humanitarian intervention was not undertaken in Somalia and advocated for its consideration early in the crisis in the state to avert gross violations of human rights as perpetrated by the government. The possible employment of humanitarian intervention in Somalia would however have raised important issues

relating to sovereignty particularly with regard to whether such intervention would have been legal or legitimate both when the state was stable and sovereign and after the collapse of the state. State sovereignty was recognised, in keeping with Westphalia, as the primary constitutive principle of the modern international political system, and it was intended to enhance security and order. In the post-Cold War era, the increasing calls for democracy and respect for human rights signify the need for the re-examination of the concept of sovereignty.⁴ Sovereignty must be seen as responsibility.⁵ Sovereignty is not absolute as the state derives its legitimacy from its subjects. States are formed through a social contract and are thereafter entrusted with the primary responsibility to protect the security of their peoples. Where for some reason this primary responsibility cannot be fulfilled by the state, then the international community has the responsibility to protect the affected people. Based on this notion, where the state is responsible for gross violations of human rights on the same citizens it is expected to protect, the international community has an obligation to undertake humanitarian intervention to save the population from any suffering. This obligation is best seen in a statement by UN Secretary General Kofi Annan when he proclaimed "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?"⁶

⁴ Makinda, Samuel M. 'The United Nations and State Sovereignty: Mechanism for Managing International Security' *Australian Journal of Political Science* Vol. 33 No. 1 1988, 113.

⁵ Deng, Francis M. *Protecting the Dispossessed: A Challenge to the International Community*. Washington DC: Brookings Institution, 1993.

⁶ Annan, Kofi A. *We the Peoples: The Role of the United Nations in the 21st Century*. New York: UN, 2000, p. 48.

Sovereignty can now be challenged with the growing concern for the respect for fundamental human rights as supported by the following arguments. Firstly, sovereignty brings with it responsibility; a state is responsible for its population and if it is unable or unwilling to act responsibly towards that population, then it forgoes an element of sovereignty, thus allowing other states to intervene on behalf of its population. The second argument is that the Universal Declaration on Human Rights gave universal rights to the individual and therefore the world has a right and duty to step in to stop gross abuses perpetrated on the individual. A good analogy was made by the Canadian Prime Minister Brian Mulroney when he stated that:

“Just as it is no longer acceptable for society, the police or the courts to turn a blind eye to family violence, so it is equally unacceptable for the international community to ignore violence and repression within international borders.”⁷

Sovereignty is thus not sacrosanct if it permits governments to abuse human rights within their borders. Humanitarian intervention provides a check on states that violate and commit large scale human right abuses and emphasises the importance of the rights of individuals over the rights of states. This argument is a departure from a previous reality in the international system which was based on respect for the sovereignty of the nation state. The Barre government was internationally recognised as a sovereign state until the very end despite well established knowledge of human rights violations as reflected in the Isaak, Majerteen and Hawiye massacres. The recognition of the sovereignty of the state was used to stop other nations from questioning the gross violations of human rights or to contemplate intervention particularly from African states.

⁷ Abiew, Francis Kofi. *The Evolution of the Doctrine and Practice of Humanitarian Intervention*. The Hague: Kluwer Law International, 1999, p. 66.

In a collapsed state where there are no functioning government institutions, armed political groups are responsible for protecting human rights in the areas under their control. As the armed groups, organised along clan lines, perpetrated human rights abuses on people under their territorial control, humanitarian intervention was justified. Somalia thus required humanitarian intervention once Barre left and during the clan clashes in the collapsed state.

Sovereignty is thus no longer an excuse that can be voiced to mute concerns over internal human rights abuses. For Africa where gross violations of human rights have been rampant, the lesson is that humanitarian intervention is now a critical 'default duty'⁸ that must be exercised when states fail to fulfill their responsibilities to their citizens exposing them to gross violations of human rights. This implies that a state has international responsibilities to its people, rather than just national ones, particularly with regard to human rights issues. A state is thus subject to humanitarian intervention in gross violation of human rights while on the other hand other states and regional and international organisations have an obligation to act in gross violations of human rights. The Somalia case called for humanitarian intervention both under Barre and after his departure.

Legitimacy and a collapsed State

Humanitarian intervention has been earlier defined as the use of military force, by one or more states in another state that has as its primary purpose the relieving of gross violations of human rights perpetrated by a government on its people. Gross violations of human rights may be encountered through policies of a particular political authority, a

⁸ Shue Henry. 'Limiting Sovereignty' in Jennifer M Welsh (ed.) *Humanitarian Intervention and International Relations*. Oxford: Oxford University Press, 2004.

cruel and repressive regime, or be a consequence of a breakdown of central governmental authority. In the case of a failed state like Somalia, gross violations may result from the lack of authority that can provide protection for a community of people who are oppressed by different factions struggling for power or be undertaken by the various factions struggling for power.

For legitimacy, humanitarian intervention does not require the consent of the state perpetrating the gross violations of human rights on its people as, in most instances, it is the ruling regime that is the cause of the atrocities and would not therefore consent to intervention. On the other hand where the atrocities are due to breakdown of central authority, the warring factions would not give consent for intervention as this would interfere with their ability to attain power. In the case of Somalia, Siyad Barre would not have accepted intervention during the Hawiye, Isaak and Majerteen massacres as this would be undermining his government and giving support to the opposition. Under the circumstances, intervention should have been forcefully undertaken by the international community.

In 1987, the US Congress cut off aid to Somalia following the reporting of gross human rights abuses in the state by Amnesty International. This did not stop the Barre regime, which was by then facing much resistance from the SNM and USC, to take heed of the cut in foreign aid and respect obligations to the citizenry in conformity with the relevant human rights conventions in place. Human rights abuses continued relentlessly leading to more human suffering. Having confirmed that there were gross violations of human rights, taking note of their prior warning to Barre through the cut in foreign aid, and in view of the continuing gross violations of human rights, USA should have

undertaken humanitarian intervention in Somalia between 1987 and 1990. This action would, in retrospect, have averted the gross violations of human rights in Somalia, put the chaotic situation in order, warned the opposition forces (USC and SNM) of similar action and have saved Somalia from eventual state collapse and anarchy. A regime change would have been a possible outcome at the time as the intervening forces would have been facing the government forces.

Following the departure of Barre from Mogadishu in 1991, the state of Somalia collapsed as “when the *de jure* government of a state dissolves and nothing takes its place (except widespread civil war or anarchy), what exists is a collapsed state.”⁹ Somalia became a collapsed state. Somalia may also be classified as a collapsed state under the Montevideo Convention as it was no longer a sovereign state. The Montevideo Convention requires that for a territory to be recognised as a state it must have a defined boundary, a permanent population, a government and the ability to enter into international agreements. Somalia failed to meet the last two counts and therefore became a collapsed state. It should however be noted that the Montevideo Convention never contemplated the case of a collapsed state but was used for recognising new states like those coming out of colonisation.

The UN Charter never envisaged conditions of state collapse. It may be argued that in state collapse as in the case of Somalia, sovereignty and territorial integrity were compromised as none of the warlords had total control of the state. It can be concluded that the protection of citizens against gross violations of human rights particularly in a failed state where there is turmoil and lack of central control, best justifies the

⁹ Levitt, Jeremy. ‘Humanitarian Intervention by Regional Actors in Internal Conflicts: the case of ECOWAS in Liberia and Sierra Leone’, *Temple of International and Comparable Law Journal* 13, 1988, pp 333-354.

employment of humanitarian intervention more than in a stable, sovereign state. In all cases however, neither the state nor armed factions are permitted to engage in gross violations of human rights. Barre's rule was punctuated by incidents of massacres, executions and crimes against humanity hence becoming a subject of intervention at different times. On the other hand, to the degree that the warlords entertained gross violations of human rights, Somalia was a genuine case for humanitarian intervention.

Somalia presented a challenge with regard to humanitarian intervention. There was lack of a concrete mechanism on how to handle a failed state as there was no immediate precedence and the situation was even more complicated by the persistent gross violations of human rights within the state. Most of the humanitarian interventions undertaken in the past had been where a state had committed atrocities on its peoples. This dilemma could partly explain the delay in international response in Somalia. It may however be argued that in gross violations of human rights, there is an obligation on all states to undertake humanitarian intervention in a failed state just as in a stable sovereign state. In the collapsed Somali state, humanitarian intervention was therefore legitimate in the face of the ongoing gross violations of human rights perpetrated by the warring clan militias against the different clans and minority groups.

Who could have Intervened

There was confusion, uncertainty and reluctance to intervene in Somali. In retrospect, had the international community undertaken humanitarian intervention, much of the human catastrophes that unfolded in Somalia could have been avoided. In theory, there should have been no shortage of actors who would have intervened in the crisis that engulfed the state. Somalia was a member of the Arab League and the OIC. Somalia was a close ally

of the US and the West, receiving millions of dollars in economic and military aid. It had good relations with the former colonial powers of Britain and Italy. Finally, Somalia was a member of the OAU and United Nations.

The United Nations, a group of states or individual states have in the past, before and after the Somali crisis, undertaken humanitarian intervention, though sometimes belatedly. A precedent was set in 1991, when an international force within the structure of NATO intervened in northern Iraq to protect 4,000 to 5,000 Kurds from attack by the military forces of Saddam Hussein.¹⁰ Similar action by whatever forces then available, be they from the OAU, the League of Arab States, OIC, UN or any state or group of states, would have been an ideal for Somalia. The role of some actors who could have intervened or initiated humanitarian intervention, will be analysed.

United Nations

Following the collapse of the state of Somalia, Secretary General Boutros-Ghali sought to launch a UN operation with a military enforcement mechanism by invoking Chapter VII of the Charter. One particularly striking feature of the debate in the Security Council was the degree to which the previously inviolable principle of state sovereignty was not a constraint on the Council's decision-making as all the members of the Council agreed on this decision. Ultimately the US led UNITAF was chosen as the most appropriate response. It was mandated to use all necessary means to establish as soon as possible a secure environment for relief operations in Somalia in particular the protection of relief convoys from looting by clan-based militias. This was very close to humanitarian

¹⁰ Mackinlay, John. 'Armed Relief,' in Weiss and Minear, (eds.), *Humanitarianism across Borders*. Boulder, CO: Lynne Rienner, 1993, pp. 85-96.

intervention but not really as the element of human rights was not the object and focus of the deployment.¹¹

Somalia provides some key features with regard to humanitarian intervention. The Security Council adopted six resolutions on the Somali situation in 1992¹² but none specifically addressed humanitarian intervention. Although the situation was really one of human rights abuses perpetrated by clan militia against other clans, the UN resolutions were all based on threats to international peace and security following the collapse of the state. In Security Council Resolution 794, a link was made between the magnitude of the human tragedy caused by the conflict in Somalia and the threat to international peace and security. Major human right violations were, for the first time linked with Chapter VII to justify military intervention. However, while the debate even in the Security Council centred on humanitarian reasons and while the primary reason for acting was humanitarian,¹³ the actual conduct was not use of force to contain gross violations of human rights but use of force to ensure the distribution of relief supplies to needy people. In essence this was humanitarian assistance and not intervention as reflected in resolution 794 which authorised member states 'to use all necessary means to establish a secure environment for humanitarian relief operations.' Gross violations of human rights as perpetrated by the warring clans continued as the mandate of 794 did not entail stopping such violations.

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¹¹ Jonah, James. 'Humanitarian Intervention', in Thomas Weiss and Larry Minear, (eds.), *Humanitarianism Across Borders: Sustaining Civilians in Times of War*. Boulder, CO: Lynne Rienner, 1993, pp. 69-84.

¹² Malanczuk, P. *Humanitarian Intervention and the Legitimacy of the Use of Force*. Amsterdam: Het Spinhuis 1996.

¹³ Roberts, Adam. 'Humanitarian War: Military Intervention and Human Rights'. *International Affairs*, 69/3, 1993, pp. 429-49.

In Resolution 794, the Security Council circumvented the implied requirement to enter a country only with the consent of the government by recognizing the destabilizing potential of widespread famine and continued civil war in Somalia as a threat to international peace.¹⁴ The reticence by some members of the Security Council to intervene in the domestic politics of a state (even a failed state) without a formal request from political representatives was conveniently overcome through a Somali request for UN intervention in the form of a letter from the Somali Charge D'affaires in New York who, in reality, represented no one.¹⁵ This was not necessary as in employing humanitarian intervention, consent of the state or any other authority is not necessary if humanitarian intervention has been identified and the action is undertaken for the sole purpose of containing the prevailing gross human rights violations perpetrated by a government against its people.

Roberts correctly argues that the Somali case was exceptional because it was not a case of intervention against the will of the government, but of intervention when there is a lack of government following state collapse.¹⁶ Essentially there was no objection to Resolution 794 possibly because there was no issue of eroding the principle of sovereignty of a state because the state of Somalia had ceased to exist. Similarly, it is inconceivable that the United Nations, any regional organisation or state would have blocked any state or group of states from unilateral humanitarian intervention in Somalia to stop the gross violations of human rights after the departure of Barre when such intervention could have saved hundreds of lives.

¹⁴ Hutchinson, Mark R. 'Restoring Hope: UN Security Council Resolutions for Somalia and Expanded Doctrine of Humanitarian Intervention', in *Harvard International Law Journal*, 34 Spring 1993, pp.624-40.

¹⁵ Roberts, *Humanitarian War*.

¹⁶ *Ibid.*,

It is unfortunate that at no point in the foreign intervention in Somalia has any organisation or state expressly put forward the doctrine of humanitarian intervention as a legal argument for its intervention. Thus UNITAF and UNOSOM I and II, implemented on the various UN resolutions, did not address the gross human rights violations so that these crimes continued unabated during the period of the conflict to the present moment. Thus, despite the various incidents of human rights abuses in Somalia, the UN action, though legitimate, was at no point undertaken as humanitarian intervention.

The United Nations should have intervened militarily in Somalia because it would have been in accordance with the United Nations' principles to prevent gross violations of human rights and to punish those who commit these offences. Article VIII of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide states that, "Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any other acts enumerated in article III."¹⁷ Under Article VIII, when called upon by members of the United Nations to intervene in order to prevent and suppress the genocide in Somalia, the United Nations' Security Council should not have deliberated on how to classify these events, but rather should have intervened in order to prevent the loss of human life in order to protect and promote human rights. The UN reluctance to accept the existence and suppress the genocide in Somalia, an absolutely heinous crime under international law, was a tragic failure on its part.

¹⁷ 'United Nations Convention on the Prevention and Punishment of the Crime of Genocide.' *UN General Assembly Resolution 260(III)A* of 9 December, 1948.

United Nation's involvement in Somalia, should therefore have had, from its inception and throughout the Somalia crisis, focused on human rights issues as a central aim with a view to averting human suffering. The protection of human rights would have had the added advantage of accelerating the restoration of peace and conditions for normal life. On the contrary, the major role of the UN intervention force was to protect relief convoys and assistance in political and economic reconstruction of the state while allowing hundreds of thousands of Somali refugees to flee the country and others to suffer human right abuses in the hands of the warlords. The UN did not consider the containment of gross human rights violations among its mission priorities in Somalia. This neglect not only allowed human rights abuses to continue unabated but led to gross violations of human rights that required humanitarian intervention which was, unfortunately, not contemplated at any time by the UN in the Somali crisis.

The OAU and the African Union

Regional organisations are more likely to intervene in internal armed conflicts because of their geographical proximity and because they are most affected by such crises which threatens regional peace and security.¹⁸ The ECOWAS intervention in Liberia and Sierra Leone and NATO action in Kosovo confirms this proposition.

Africa's traditional posture of non-interference in the internal affairs of other states was reversed with the establishment of the AU. Africa has now come to assert her priorities in humanitarian intervention through the African Unions Constitutive Act. This Act allows for intervention, in gross violations of human rights, without the consent of the target state in a way that the former Organisation of the Africa Union (OAU) never

¹⁸ Jaye, Thomas. *Issues of Sovereignty, Strategy and Security in the Economic Community of West African States (ECOWAS): Intervention in the Liberian Civil War*. Lewiston: The Edwin Mellen Press, 2003.

did. Article 3 of the OAU Charter states, amongst other principles, 'the strict adherence to the sovereignty and equality of all member states; non-interference in the internal affairs of States; respect for the sovereignty and territorial integrity of each state; and for its inalienable right to independent existence.'¹⁹ In stark contrast, Article 4(h) of the AU provides for the right of the African Union to intervene in a Member State in respect of grave circumstances, namely war crimes, genocide and crimes against humanity. The AU act also provides much leeway in the criteria for intervention in as much as Articles 4(m), 4(o), and 4 (p) respectively provide for the respect for democratic principles, human rights, the rule of law and good governance; respect for the sanctity of human life, condemnation of terrorism and subversive activities; and condemnation and rejection of unconstitutional changes of government.

The position taken by the member states of AU is important for a number of reasons. Firstly, the AU Act is the first international treaty to recognise the right to intervene through humanitarian intervention in gross violations of human rights by a state against its citizens.²⁰ Secondly, it reflects a growing recognition that the principle of sovereignty cannot, be used as a barrier by which oppressive leaders may continue to abuse their people.²¹ Thirdly, if leaders are held responsible of abusing their people, intervention will be considered as a means to end violence and restore peace. Lastly, and perhaps most significantly, it appears that Africa is defining and asserting its own

¹⁹ OAU, *OAU Charter*, Article 3(1-3).

²⁰ Baimu, E and K. Sturman, 'Amendment to the African Union's right to intervene: a shift from human security to regime security', *African Security Review*, 12/2 (2003), p.40.

²¹ Du Plessis, L, 'Conclusion: the challenge of military intervention', in L. Du Plessis and M. Hough, *Managing Africa's Conflicts: The challenge of Military Intervention*. Pretoria: HSRC, 2000, p. 337.

priorities as it now has sufficient leeway to sanction humanitarian intervention missions on the continent.

The African Union has thus come to terms with the changed realities of the African state system by accepting intervention in internal affairs of states that engage in gross violations of human rights. The traditional constraint against interfering in the internal affairs of another state is history and humanitarian intervention in gross violations of human rights, now takes precedence.

The many occurrences of internal instability in African states after the end of the Cold War and the reluctance of states and international organisations to intervene in time, stresses the need for African states to seek homegrown alternatives to these problems. One option for Africa is to seek and establish hegemonic stability within the different African regions which can intervene when required. There is need therefore to either have a strong regional or continental hegemon to intervene unilaterally or to mobilise other African states to intervene under their lead. Politically, economically and militarily strong nations, which have the necessary resources and are willing to commit them for that purpose, are required as hegemons as they can make regional intervention a success. Good examples abound in Sub Saharan Africa. The ECOWAS intervention in Liberia and Sierra Leone and the particular role of Nigeria as the regional hegemon set a landmark in the history of interventions in intra-state conflicts in Africa though these were undertaken as general intervention as opposed to humanitarian intervention. The Horn of Africa does not have a clear hegemon but Kenya's emerging role particularly after her sterling performance in the Sudan and Somali peace talks cannot be ignored.

South Africa is the hegemon in the southern African subsystem and played a key role in the crisis in Lesotho.

African states, under the auspices of the African Union, may also establish a ready African force that may implement the resolutions of the AU in this endeavour. The current arrangements for regional brigades in Africa is a good initiative that could be further developed to be able to undertake humanitarian intervention other than peacekeeping duties. In developing these brigades, it is appropriate to take advantage of the US, UK and French initiatives aimed at strengthening African peacekeeping capacities so as to take the lead in local peace activities as a means of reducing pressures on the Western powers for direct intervention.

International Criminal Tribunal for Somalia

Governments are responsible and accountable for protecting the human rights of their citizens, according to their constitution or laws and in line with international human rights treaties. The Barre government was bound by international and regional human rights treaties as ratified by or acceded to by Somalia, and customary rules of international law. Somalia is party to the International Covenant on Civil and Political Rights and its First Optional Protocol, the International Covenant on Economic, Social and Cultural Rights, the four Geneva Conventions of 1949, the African Charter on Human and Peoples' Rights, the UN Convention against Genocide and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

While Somalia was a collapsed state without functioning governmental institutions, international law required armed political groups and their leaders to respect

all the covenants that had been ratified by the previous governments and equally respect human rights of all persons within the territory and subject to their control irrespective of clan differences. Under Barre a lot of gross violations of human rights were meted on the people, particularly innocent civilians based on their alleged support for their clans. These abuses were continued by warlords and their agents following state collapse. Such abuses which have continued unabated have included genocide and systematic murder on the authority of Barre or Somali clans and their warlords in the collapsed state particularly between 1991 and 1992. Ethnic cleansing of civilian populations from their homes and land has been a feature of the civil war even before the fall of Barre. All these human rights abuses are contrary to the existing conventions on human rights and are punishable by law.

The anarchy and human rights abuses witnessed during inter-clan fighting in the 1990s were overwhelming; however international attention was focused on struggling to get humanitarian assistance to Somalis rather than averting the human right abuses. The atrocities committed by some of the faction leaders and their militia were no less horrific than those committed earlier by state officials. A concept of justice and prosecution for war crimes should have been defined as former military, security and political officials of the Barre government, who were responsible for or personally carried out the human rights abuses of the 1970s and 80s, had escaped justice. As a result and in the absence of such a mechanism, the culture of impunity already established by the previous regime became integral to the Somali social and political fabric.

Respect for human rights is an essential component of peace and reconciliation and a necessary basis for the new Somali state. All those who committed atrocities under

Barre's rule should be brought to book. Warlords are responsible for abuses by their militias and should investigate all abuses committed by their forces impartially and provide the same to any tribunal that may demand the same in the future. All alleged criminals and extortionists who instigated killings and other criminal activities against Somali citizens must thus be brought to trial before a human rights court of law and made to pay for their criminally destructive behaviour. In retrospect, a humanitarian intervention would have had the immediate aim of stopping the gross violations of human rights and then moved to facilitate the detention of those responsible so as to try them at an international tribunal for committing crimes under international law.

This study has established that gross human rights violations have been committed in Somalia. The international community has demonstrated the authority and willingness to establish tribunals to prosecute those accused of genocide, war crimes, crime against UN personnel and crimes against humanity. Since both the Genocide Convention and the Geneva agreements cover internal conflicts, offences committed during civil war and other internal disputes, as long as they entail gross human rights violations, form offences under international law and demand the convening of a tribunal.

Since the establishment of the International Criminal Court (ICC) in 2002, the trend has to been to deal with cases under the permanent court of the ICC as opposed to establishing *ad hoc* tribunals. The problem with the Somali case is that the ICC has jurisdiction only with respect to crimes committed after the entry into force of the Statute on 1 July 2002 and not before. The Somalia cases that qualify as crimes against humanity date back to 1987 and thus cannot be handled by the ICC. There is need therefore to establish an international criminal tribunal for Somalia to cover both the period under

Barre and during the clan led civil war so as to prosecute any offenders. Leaving the case to rest as is the case now, is setting a bad precedence. An international criminal tribunal for Somalia is therefore very appropriate.

Human Rights Monitoring

The Barre regime could be accused of gross human rights violations as early as 1987. Repeated atrocities and the incidences of state sponsored genocide against the Isaaq population in northern Somalia was rampant. Bombardment of civilian targets, mass killings and destruction of the sources of livelihood were among the main abuses.

It was quite evident in Somalia as it was also in Darfur and Rwanda²² that under the current arrangements, the international community is slow to admit that gross violations of human rights have been committed. In addition, the aggrieved party, in most instances the citizenry on whom the atrocities are committed, lack an international forum for complaint as the international community only recognises sovereign states. The Harti executions by Ogadens under Omar Jess in Kismayu in December 1992, was a clear case where civilians should have been able to seek assistance from a supranational body. The case of Darfur took a particularly long time before the USA and the United Nations could admit that genocide was ongoing. In this respect, there is need for provisions for complaints from aggrieved individuals and parties. Any individual, groups of people, or aggrieved communities, could present their case and provide evidence to document and validate charges of gross human rights violations or genocide. By the supranational body rendering a favourable decision in gross violation of human rights, any state, or coalition would have legal justification to intervene, and no state would have reason to object to

²² Hoffman Stanley. 'The Debate about Intervention', in Chester A Crocker, Fen Osler Hampson and Pamela Aall (eds.), *Turbulent Peace: The Challenges of Managing International Conflict*. Washington DC: United States Institute of Peace Press, 2001.

such action or veto humanitarian intervention as in the case of the Security Council. There would possibly also, be no requirement for humanitarian intervention as conceivably the legal approval could be sufficient to coerce the guilty party to cease and desist from gross violations of human rights.

There is thus need to establish a unit under the UN High Commissioner for Human Rights and at the AU with the sole function of monitoring, analysing and interpreting information on indications of conspiracy to genocide or any other forms of escalating violence that may lead to gross violations of humans rights. Any adverse reports that confirm gross violations of human rights would then be acted on promptly through humanitarian intervention. There is need also for an effectively and adequately funded field presence for information gathering and fact finding; NEPAD Peer Review Mechanism is a good start.

Stand-By Forces

With the end of the Cold War and superpower rivalry, African leaders have been exposed to their subjects with the citizens demanding good governance. Dictatorial leadership, use of force and vote rigging which have been practiced by leaders in the past, cannot be entertained anymore as citizens demand more transparency and accountability of their governments. With leaders determined to retain the status quo, incidents of the state clashing with the citizens leading to gross violations of human rights cannot be ruled out.

There is need therefore to develop the proper military forces for humanitarian intervention purposes. The importance of a timely response and the impossibility of putting together an effective coalition of the willing when required, necessitates the need for a readily available international humanitarian intervention force under the auspices of

the United Nations that could potentially intervene in gross violations of human rights in a timely and effective manner. A UN Stand By force or 'a UN legion type force' for this purpose is very relevant. The legion could be "a force composed of contingents in readiness put at the United Nations disposal by national governments."²³ The forces could train in their respective countries but be available and guaranteed for deployment at short notice as and when required. Similar forces could also be prepared at the regional level under Regional Organisations.

The UN could also maintain its own international force. The purpose of a conventional standing army, in any state, is primarily to provide deterrence and when this fails, to win the conflict in a manner desirable to the political masters. A UN humanitarian intervention force would provide deterrence and be readily available for immediate use in gross violations of human rights. This notion is desirable as states have become risk averse and are therefore not willing to provide troops for operations they term risky and likely to lead to loss of life. Afghanistan, Somalia, Rwanda and Iraq were clear examples where many states were not willing to contribute troops due to the likely risks to the intervening forces. The United Nations could maintain a standing international force for rapid response while the international community contemplates further action. Such a view was also proposed by Boutros Boutros Ghali who indicated that sovereignty had been diluted and replaced by universal sovereignty in which the rights of individuals and peoples must be internationally safeguarded, and that a United Nations standing army should be on call to enforce international peace and security wherever necessary.²⁴ In retrospect, had such a force been available, gross violations of

²³ Ibid, p. 282.

²⁴ Drysdale, Johan. *Whatever happened to Somalia*. London: Haan Associates, 1994.

human rights particularly after the collapse of the state would have been overcome by using this force in a humanitarian intervention operation. Somalia could have been used as a guinea pig to prove or disprove the viability of this doctrine.²⁵

Failure to Intervene

A pertinent issue is the action to be taken when the international community is hesitant for some reason to employ humanitarian intervention in gross violation of human rights, as reflected by the Somalia, Rwanda and Darfur cases. While the international community has an obligation to do something at least under the provision of the maintenance of international peace and security, or in gross violations of human rights, the issue is the circumstances under which one can demand that they must act in any given situation in which reluctance is evident. National parochialism sometimes makes it difficult for governments to endure sacrifices necessary to act on behalf of a foreign population. On the other hand, Western powers hesitate before becoming involved in potentially violent situations where their vital interests are not threatened as noted by Nye, Jr. who indicates that the US "should generally avoid the use of force except in cases where our humanitarian interests are reinforced by the existence of other strong national interests."²⁶ As a result, international institutions and states will not always act even in the most egregious cases.²⁷ Thus states do not intervene mainly for humanitarian motives but use such reasons to justify their use of force to achieve national interests.

Realists would argue that in a world of anarchy, and where states pursue their national interests, nobody is to blame if the international community does nothing. The

²⁵ Ibid..

²⁶ Nye Jr, Joseph, S. "Redefining the National Interest", *Foreign Affairs*, July/August, 1999, p. 32-3.

²⁷ Cynnin, Bruce. 'Multilateral Intervention and the International Community' in Michael Keren and Donald A Sylvan (eds.) *International Intervention: Sovereignty versus Responsibility*. London: Frank Cass, 2002.

closest resemblance of what may be called the international community is the UN. The UN is made up of member states and operates through a consensus. Based on this system even when the UN votes for humanitarian intervention, it so happens that not having its own standing army, it resorts to willing member states to provide the troops for the job, an exercise which may be very frustrating and time consuming. This emphasises the need of developing the UN to perform the functions of the overarching international authority that is lacking on the international scene and also giving it a standing army that may be employed when required for humanitarian intervention.

Finally, there is an emerging consensus on humanitarian intervention particularly when it is undertaken for altruistic purposes. In contemporary crisis, where there is intra-state conflict and likely state collapse with possible consequences of genocide and gross violations of human rights, the realistic choice seems to be international, regional or unilateral humanitarian intervention as demonstrated NATO action in northern Iraq and Kosovo. This is good news for Africa and it is hoped that the new AU will provide a reawakening for Africa as it goes through a renaissance, with regard to peace and security on a continent which has been engrossed and ravished by conflict and gross violations of human rights. The African Human Rights Charter needs to be closely observed and implemented through the African Peer Review Mechanism so as to ensure a uniform standard of human rights in the entire continent and to show commitment to upholding universal human rights. The world has to be a global society; human rights issues are universal and therefore the entire world must stand by at the service of humanity.

CHAPTER SIX

CONCLUSION

This study has highlighted the legitimacy of humanitarian intervention in gross violations of human rights perpetrated by a government on its people. It has affirmed that humanitarian intervention is an acceptable practice in gross violations of human rights. It has been established that such intervention may be undertaken by the UN, a regional organisation, a group of states or a single state in the event of gross atrocities committed by a government or in the case of a civil war by the warring factions, as in the case of Somalia, without the consent of the state or parties responsible for the acts.

It has been established that sovereignty is not an absolute but a set of attributes that can be curtailed when gross violations of human rights are present. Thus state sovereignty, which in the past has been invoked in challenging humanitarian intervention, must therefore represent the result of a social contract between the government and the citizens to ensure good governance. Genocide and crimes against humanity are no longer a domestic affair when caused by a government's oppression of its people. Some of the components of sovereignty have already been embedded in humanitarian norms, such as in the United Nations' Universal Declaration of Human Rights, the Genocide Convention of 1948, and the four Geneva Conventions of 1949, all in pursuit of the observance of human rights and the welfare and dignity of the individual. The doctrine of humanitarian intervention prevails over sovereignty and any principles of non intervention. It is against this background that the legitimacy of humanitarian intervention has been affirmed.

History is replete with examples of gross human rights abuses in Africa that have gone unchecked and which have ended with disastrous impacts on the civilian population

due to international indifference. In future, in debating whether to undertake humanitarian intervention, one needs to evaluate the costs and dangers of not intervening to avoid grave situations like in Somalia, Rwanda and Darfur. Where a pattern of ignoring violations of human rights is established, this could encourage states to pursue such violations with impunity and little fear of humanitarian intervention.

The crisis in Somalia started as a product of a civil war led against the dictatorship of Barre, whose regime had grossly violated human rights and used excessive coercion against the opposition. Detention, rapes and mass killings along lines were committed by the government forces throughout the 1980's and with intensity in the north of the country since 1988.

The Somalia case demonstrates the high cost of waiting too long. By 1987, the internal conflict, growing humanitarian crisis and the need for external intervention were imminent. There was reluctance in general international intervention to address the humanitarian crisis while no efforts were taken towards humanitarian intervention in spite of gross human rights violations perpetrated by the state and later by the warlords through their militia.

It has emerged that few governments commit troops to an area where no compelling vital interest are at stake. An early decisive action and the provision of a small, timely military intervention in support of humanitarian intervention early in the crisis in Somalia could have contained the human rights violations and prevented the subsequent human disaster. The rationale for recommending early intervention is that following the human suffering, it was clear that some form of action whether humanitarian intervention, assistance or general intervention would eventually have to be

undertaken. The later cases of genocide in Rwanda and Darfur reflect the same international failure to respond to clear signals.

This study has shown that reluctance to undertake humanitarian intervention by the Western powers in Somalia in particular and Africa at large may be attributed to the fact that with the end of the Cold War, Africa lost its geo-strategic significance to the major powers. In a uni-polar world, the Horn of Africa particularly lost its relevance in terms of US foreign policy priorities.¹ The US was thus initially not interested in intervening in Somalia as their interests were negligible. After the failure of the UN sanctioned US operation in Somalia, it is becoming clear that without a strong political interest, it would be difficult to garner decisive external support for humanitarian intervention in Africa. It should however be realised that the international community embody a common good that cannot be reduced to states individual interest. Thus the international community and individual states have a collective responsibility to protect citizens irrespective of their nationality under conditions of gross violations of human rights even when the envisaged humanitarian intervention does not directly relate to the interest of the intervening state.

This study concludes that humanitarian intervention was never employed at any point in the Somalia crisis and all the actions taken constituted mainly humanitarian assistance despite the incidences of gross human rights violations. It is hoped that after Somalia, Rwanda and Darfur, the UN, regional organisations and individual states will have greater propensity to seriously consider humanitarian intervention in Africa in instances of gross human rights violations and to employ it in a timely manner. As the

¹ Schraeder, Peter J. *United States Foreign Policy toward Africa : Incrementalism, Crisis, and Change*. Cambridge: Cambridge University Press, 1994, p. 160.

AU has embraced the concept of humanitarian intervention, it now needs to establish clear norms for humanitarian intervention and play a lead in this regard. It can thus be concluded that following the atrocities committed by states against their citizens particularly in Somalia and Rwanda, and regardless of the legal intricacies, it is safe to say that in the present political climate any state engaged in abuses against its citizens, is more likely to invite humanitarian intervention to a greater degree than at any other time.

Several important issues may be drawn from this study; firstly, the internal affairs of states have now become a more important component of the present international system consequently the global community has an obligation to individuals in the event of gross violations of human rights. Secondly, the Westphalian system of state sovereignty appears to be disintegrating particularly in Africa and humanitarian intervention may be undertaken against states and warring factions that perpetrate gross violations of human rights against peoples particularly in situations of ethnic conflict. Thirdly, no state should be allowed to invoke the principle of sovereignty when accused of serious human rights violations and finally, humanitarian intervention in Africa will need to be employed with haste and with the adequate force where a repressive state is unwilling to protect its citizens or is itself the cause of such abuse.

The intention recently expressed by the AU in its Constitutive Act, in not tolerating abusive states that hide behind the barriers of sovereignty, can be recognised as a positive development for a reversal of negative perceptions regarding the usefulness of humanitarian intervention in contemporary African politics. Any significant action for Africa in the search for continental peace depends, above all, upon the political will of African states. While humanitarian intervention should in most cases be regarded as an

action of last resort, when conducted in a legitimate way, it would serve as deterrence to gross violations of human rights.

This study has traced the origins and development of humanitarian intervention over time and discussed its place in international law. Sovereignty, the UN Charter, customary international law and *jus cogens* have been reviewed in justifying the legitimacy of humanitarian intervention and emphasising its relative importance in the contemporary age to contain gross violations of human. The reluctance by states to undertake humanitarian intervention during the Cold War due to the volatile nature of the international political system has been addressed. It has been noted that with the end of the bipolar international order since the end of the Cold War, there has been an increase in intra state conflict and an acknowledgement of the importance of humanitarian intervention in averting gross violations of human rights as noted in Kosovo and Iraq.

It has been established that respect for human rights is important to a just international order. The solidarist theory which advances the notion that there is a right to humanitarian intervention in incidences of gross violations of human rights as occurred in Somalia under Barre and thereafter with the warring warlords, has been logically and conclusively supported. Humanitarian intervention is indeed an essential endeavour and following the various incidences of gross violation of human rights in Somalia, the UN, regional organisations or any state should have intervened. Such action would have sent a clear signal in Africa that gross violations of human rights would not be tolerated anymore particularly after the end of the Cold War. Thus the basis for the right and obligation to undertake forceful action to protect human rights has been established. What has not been established is the will of states to act on this responsibility in a

coherent and principled manner.

Overall, this study has achieved the desired purpose. The three hypotheses have all been tested and proved. Thus humanitarian intervention is justified in gross violations of human rights when such violations are perpetrated by a government on its people and in the case of a collapsed state where the atrocities are perpetrated by the warring factions on the peoples in such a state; gross violations of human rights were committed in Somalia under Barre and by the warlords and their militias during the period of state collapse and finally, humanitarian intervention should have been employed in Somalia to avert the gross human rights violations under the Barre rule and thereafter in the collapsed state to arrest gross violations of human rights. In retrospect, had this been done, one can only be optimistic to suggest that it would have contained the gross violation of human rights and possibly have changed the past and future of Somalia for the better.

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