

UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

**CHALLENGES OF HUMANITARIAN INTERVENTION
IN AFRICA: A CASE STUDY OF DARFUR REGION
SUDAN 2003-2008**

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DECLARATION

This Research project is my original work and has not been submitted for award of a degree in the University of Nairobi or any other University

Signed.....*Anupi*.....Date.....*24/11/2010*.....

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This Research Project has been submitted for examination with my approval as the University Supervisor on behalf of the Institute of Diplomacy and International Studies

Signed.....*Robert Mudida*.....Date.....*24/11/2010*.....

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DEDICATION

This work is dedicated to my husband Wycliffe, and my son Roland

ACKNOWLEDGEMENT

I owe my supervisor Dr. Robert Mudida special thanks for his immeasurable support and guidance. His commitment to the finality of this work both in quality and detail, against all other demanding duties is indeed humbling.

My family for the moral support as i was undertaking my research.

Flo and Farmy for the encouragement as i worked on this project.

And all who made every step of the journey worth taking. Many thanks.

ABSTRACT

This study seeks to investigate the challenges facing humanitarian intervention as a mode of third party conflict management and whether it is adequately and timely used in situations of conflict that lead to widespread violations of human rights of victims. Secondly the study will also investigate whether the general principles of humanitarian intervention like state sovereignty and consent are applicable in cases of gross violation of human rights. Darfur will be used as a case study.

Both primary and secondary data will be consulted in conducting this research. Primary data will include structured interviews with key informants being Sudanese refugees in Kenya and Sudanese Embassy officials, Individuals who have worked in Sudan and other conflict areas, individuals working in NGO world and have extensively worked in Darfur region and other conflict areas and finally academicians in the field of conflict.

This study has critically analyzed the concept of humanitarian intervention in Darfur with a view to adding on to already existing literature on the subject.

At the end of the study it will clearly come out that humanitarian intervention should take place in the Darfur region in order to avert the suffering of the civilians in this region.

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ACRONYMS AND ABBREVIATIONS

AU	-	AFRICAN UNION
CFC	-	CEASE FIRE COMMISSION
DPA	-	DARFUR PEACE AGREEMENT
EU	-	EUROPEAN UNION
GOS	-	GOVERNMENT OF SUDAN
ICISS-		INTERNATIONAL COMMISSION ON INTERVENTION AND SOVEREIGNTY OF STATES
IDP	-	INTERNALLY DISPLACED PEOPLE
JEM	-	JUSTICE AND EQUALITY MOVEMENT
JC	-	JOINT COMMISSION
MSF	-	MEDECINS SANS AND FRONTIERES
NATO-		NORTH ATLANTIC TREATY ORGANIZATION
NGOS	-	NON- GOVERNMENTAL ORGANIZATIONS
OAU	-	ORGANIZATION OF AFRICAN UNION
SLA	-	SUDAN LIBERATION ARMY
UN	-	UNITED NATIONS
UNAMID-		UNITED NATIONS AFRICAN MISSION IN DARFUR
UNSC	-	UNITED NATIONS SECURITY COUNCIL
US	-	UNITED STATES

CHAPTER 1

BACKGROUND TO THE STUDY

Today, it is argued that Africa is the most conflict rocked continent. In these conflicts, egregious violations of human rights have been reported making Africa a continent from which horrendous statistics of destruction and inhumanity have emanated.¹ It is also true that most of these conflicts on the continent are purely internal and give rise to many deaths and gross violations of human rights.

Humanitarian intervention is a mode of third party intervention in conflicts. It is a tool available to the international community and is particularly encouraged where human suffering occurs at the hands of a host government or where the state system is unwilling to address such conditions. In other cases, humanitarian intervention is requested by the authorities in power where a nation state is unable to relieve trauma and suffering.² The concept of humanitarian intervention is related to several disciplines, namely international law, political science, morality and international relations, one may thus come across different definitions and categorizations of

¹ M.Mekernkamp et al (Eds), *Searching for peace in Africa* Also cited in K. Kindiki, 'Humanitarian Intervention: Its legality and Applicability to Internal Armed Conflicts in Africa' *East Africa Law Journal of Peace and Human Rights (EALJ)* Vol 7 Number 1. (2001) pp. 16-54

² C. E. Miller, M.E. King (Eds) *A Glossary of Terms and Concepts in Peace and Conflict Studies*, 2nd Edition, (Africa Programme , University for Peace .2005) pp. 43-44

the term.³ Different scholars have different definitions for the concept of humanitarian intervention;

For Holzgrefe⁴, it is the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals in the state other than the intervening state's own citizens, this is done without the permission of the state within which whose territory force is applied. Holzgrefe's definition deliberately excludes two types of behaviour namely non-forcible intervention which will include threat or use of sanctions and forcible interventions that are aimed at protecting or rescuing the intervening state's own nationals. According to Holzgrefe, this is not because the legality or morality of these types of interventions is uninteresting or unimportant, but because the question of whether states may use force to protect the human rights of individuals other than their own citizen is more urgent and controversial.⁵ This definition best suits the topic at hand as it emphasizes the importance of use of force where there are grave violations of fundamental human rights of individuals in a state.

For Rosenau⁶ the concept of intervention suffers from ambiguity and lack of definitional clarity. On the other hand, for Winfield⁷, intervention is a right; it is a crime; it is the rule; it is the

³ See S. Karda, "Humanitarian Intervention: A Conceptual Analysis" *Turkish Journal of International Relations* Volume 2 No. 3 & 4 (2003) p. 24

⁴ J.L. Holzgrefe and R.O. Keohane (Eds), *Humanitarian Intervention: Ethical, legal and political dilemmas* (Cambridge: Cambridge University Press, 2003) p.18

⁵ Supra note 4

⁶ J.N. Rosenau, 'Intervention as a scientific concept,' *Journal of Conflict Resolution* Vol 13 (1969) p. 160

⁷ P.H. Winfield, 'The History of Intervention in International Law,' *British Year Book of International Law*, Vol 13 (1922-23) p. 130

exception; it is never permissible at all. These definitions only add up to the various definitions and are not all inclusive as the one by Holzgrefe.⁸

For Hall⁹ intervention takes place when a state interferes in the relations of two other states without the consent of both or either of them, or when it interferes in the domestic affairs of another state irrespective of the will of the later for purposes of either maintaining or altering the actual condition of things within it. Prima facie intervention is a hostile act because it constitutes an attack upon the independence of the state subjected to it. Hall's definition is wanting in that it does not look at intervention as a matter of urgency in certain situations instead it emphasizes that it is an attack on independence of the state subjected to it. This definition seems to be leaning more on the concepts of respect of sovereignty and rules of non intervention in the internal affairs of states.

For Bryan¹⁰, humanitarian intervention is "an intervention by the international community to curb abuses of human rights within a country even if the intervention infringes on the country's sovereignty". This definition only envisages a scenario where intervention is undertaken by a group of states thus does not envisage unilateral intervention.

Sean¹¹ defines Humanitarian Intervention as "the threat or use of force by a state, group of states, or international organizations for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights. It is a coercive

⁸ Supra note 4

⁹ W.E. Hall, *A Treatise on International Law*, 7th Edition, (Oxford : Oxford University Press 1917) p. 130

¹⁰ A. G. Bryan, (ed.,) *Black's Law Dictionary*, 2nd Pocket Edition (Minnesota :West Group, 2001) p. 840

¹¹ D. M. Sean., *Humanitarian Intervention: The United Nations in an Evolving World Order*, (Pennsylvania: University of Pennsylvania Press, 1996) pp. 11-12

action by state or non state actors involving the use of armed force in another state without the consent of its government, with or without authorization from the UN Security Council, for the purpose of preventing or putting to halt gross and massive violations of human rights or international humanitarian law.¹² Sean's definition covers all actors in the international system when it comes to the duty to intervene. This definition is better than that of Holzgrefe as Holzgrefe's definition only envisages the state as the only actor capable of intervening in the internal affairs of another where there is gross violation of human rights.

For Hugo¹³, Humanitarian intervention has to involve threat of or use of force, by a state or group of states or an international organization with or without the consent of the United Nations. This definition brings a new dimension whereby the consent of United Nations becomes an element in intervention. It correctly provides that actors may intervene with or without consent of the UN. As discussed elsewhere¹⁴, we will see that the Veto power in the SC has made it very difficult for the UN to approve intervention in Darfur.

Although the definition by Sean¹⁵ is the best out of the ones discussed above, in my view there is no one single definition that can be said to be all inclusive in fact the above definitions build on one another to provide a better understanding of the concept of humanitarian intervention.

¹² Danish Institute of International Affairs, 'Humanitarian Intervention: Legal and Political Aspects,' A report submitted to the Minister of Foreign Affairs, Denmark, called the Danish Institute Report, (1999) p.809

¹³ S. Hugo 'Military Intervention to Protect Human Rights: The Humanitarian Agency Perspective,' *Journal of Humanitarian Assistance*, Vol 79 No. 3 (2003) pp. 481-501

¹⁴ See discussion in Chapter 3 on vital interests in Darfur

¹⁵ See Supra note 11

From the above definitions by various scholars, it has become evident that the following elements are necessary for humanitarian intervention to be said to be necessary;

Firstly, the action must be taken against the consent of the target state. Secondly, there must be abuse of state sovereignty by state/states and by doing so, the human rights of its nationals and/or others are abused. Thirdly, it has to involve threat of or use of force¹⁶ by a state or group of states or an international organization with or without the consent of the United Nations. Fourthly, it is aimed at preventing, limiting or stopping serious violations of human rights on a large scale, especially where the government of a subject state is either perpetrating the violations or is unable or unwilling to allow international action to be taken. Any government derives true legitimacy only from the willing consent of the governed and the first obligation of government is to provide security for its people. A government that cannot protect its people from external threats has failed in its primary responsibility, while a government that itself threatens the lives and security of its citizens forfeits any claim to legitimacy.¹⁷

From the above definitions, it is evident that intervention is an act that takes place as an exception to the general rule of non interference with the internal affairs of a state and this takes place or is allowed to take place especially where there is widespread abuse of human rights.

¹⁶ Supra note 12

¹⁷ <http://www.globalfocus.org/GF-Intervention.htm#elements> updated 2009

The concept of Humanitarian Intervention is related to several disciplines, namely, international law, political science, morality and international relations, and this explains why we have different definitions and categorizations¹⁸ depending on the discipline attempting to provide a definition of the concept.

STATEMENT OF THE RESEARCH PROBLEM

Darfur violence in Sudan erupted in early 2003, and has witnessed indiscriminate aerial bombings, military attacks and raids by the militias claiming more than 300,000 lives and displacing millions internally and internationally. The situation is termed “the world’s worst humanitarian crisis” or “genocide” by the United Nations and the United States respectively.

Group murders, systemic rape, harassment, torching and looting villages in Darfur, which continue to claim more civilian lives and create insecurity in the region, requires more than international attention and humanitarian intervention. It demands decisive actions to halt violence and human suffering. "It's time to put the shame where it rightfully belongs: on the perpetrators and on those who allow these crimes to happen", claimed the UN Commissioner for Human Rights after a week-long tour in Darfur.¹⁹

There is no doubt that in any form of intervention there are always challenges that arise and humanitarian intervention is no exception.²⁰

¹⁸ See S. Karda, “ Humanitarian Intervention: A Conceptual Analysis” *Turkish Journal of International Relations* Volume 2 No. 3 & 4 (2003) pp. 50-62

¹⁹ UN Briefings at www.un.org/reports

²⁰ Refer to Chapter 4 for a detailed discussion of challenges of humanitarian intervention in Darfur.

This study therefore seeks to investigate the challenges facing humanitarian intervention as a mode of third party conflict management and whether it is adequately and timely used in situations of conflict that lead to widespread violations of human rights of victims. Secondly the study will also investigate whether the general principles of humanitarian intervention are applicable in cases of gross violation of human rights. Darfur will be used as a case study.

As noted in the report prepared by the International Commission on Intervention and State Sovereignty: “External military intervention for human rights protection purposes has been controversial both when it has happened – as in Somalia, Bosnia and Kosovo – and when it has failed to happen, as in Rwanda.”²¹ Humanitarian intervention is one area that many developing countries especially in Africa, Asia and Latin America treat with caution for fear of abuse and challenge of sovereignty by major powers. This is an obviously valid concern since it is only major powers and powerful states that have the capability to intervene.

The Darfur conflict was chosen as case study as it is one of the more recent conflicts where many lives have been lost, thousands displaced and rules of international law on human rights not adhered to. In fact, the example of Darfur is one where there has been a lot of controversy in terms of whether the UN and generally the international community has been lax in intervening to avoid the large scale violation of human rights that continue to be witnessed in the war torn region.

In light of the gross violation of human rights in the case of Darfur, the study will beg to answer the question as to whether enough has been done in Darfur in terms of humanitarian intervention.

²¹ Report of the International Commission on Intervention and State Sovereignty (ICISS, 2001)

OBJECTIVES OF THE RESEARCH

The main objective of this study is to demonstrate the importance of humanitarian intervention in protecting human rights violations in Darfur region of Sudan.

The sub-objectives are;

Firstly, to establish when and how intervention should take place in Darfur amidst gross violation of fundamental human rights;

Secondly, to establish whether enough has been done in the Darfur region in terms of humanitarian intervention.

JUSTIFICATION OF THE STUDY

This study is academically justifiable in the sense that it provides a valuable and useful means to closely examine the hypothesized role of causal mechanisms in the context of individual cases; and their capacity for addressing causal complexities. It exploits a complete uninterrupted chain of evidence to establish an argument on the gaps that have existed with regard to third party humanitarian intervention. It further creates a shift from the established norms by providing opportunity for future research and contributions to the body of knowledge with regard to humanitarian interventions. Thus, the study will provide or significantly contribute to already existing literature on the subject under study while providing a blend of the two extreme views arguing for or against humanitarian intervention.

At the policy level, the study against the backdrop of the effect of the Darfur conflict having left many dead and thousand displaced; will highlight the practical effects of not allowing

humanitarian intervention in a country where there is loss of lives on a large scale without regard and respect to fundamental human rights. It is hoped that the study will inform policy developers of an alternative lens as to when humanitarian intervention is justifiable.

Further the study will address gaps left in existing literature most of which either supports or condemns intervention in the internal affairs of a state.

Fundamental questions addressing internal conflicts can often be summed up in three areas of intervention viz: the cause, effect and management. Various processes influence studies of cause, effect and management of internal conflicts. In deed most internal conflicts have capacity to spiral across borders necessitating the intervention of third party states for extraterritorial management options. While this is often looked at as a last resort, intervention, its timing and capacity to provide lasting solution is often pegged on international players in conflict management at which point lives of thousands shall have been lost with millions displaced and faced with severe life threatening living conditions.

Internal conflicts have often been characterized by gross violation of human rights of populations perpetrated in the presence of the host government and in contravention of well established norms.

Some political philosophers like Michael Walzer²² regard intervention in the internal affairs of other states in order to stop extreme human rights abuses as the chief dilemma of international politics. Walzer observes that it is not too much an exaggeration to say that the greatest danger most people face in the world today comes from their own states.

²² M. Walzer, *Just and Unjust Wars*, 3rd Edition (New York: Basic Books, 2000) p. xi

The critical issue in any debate on humanitarian intervention is the need to harmonize intervention with the principle of sovereignty, which in essence requires that a sovereign state be treated as an independent political unit, its territorial integrity respected, and it be allowed to pursue its domestic affairs without external interference. It is against this background that the debate on the legitimacy of humanitarian intervention must be continued, in order to clarify whether military intervention can be justified on the basis of general international law. With this in mind, I therefore by this study intend to add valuable contribution to the debate in support to humanitarian intervention where there is gross violation of human rights.

LITERATURE REVIEW

The literature to be used in this study will be discussed in two levels as follows;

Firstly, humanitarian intervention will be discussed in its broad sense, in terms of its origins, development and the different debates that try to explain the concept; This is important because firstly, it assist in explaining the concept generally and further discusses its origins with a view of emphasizing its importance; secondly, it provides a link between theoretical concepts and the practice; thirdly it presents existing relevant general information on humanitarian intervention that will inform the basis of the study. The general literature will be organized as follows; The history of the concept will be discussed with a view of understanding its evolution, then classical definitions of the concept by various scholars will be undertaken, scholarly arguments for and against the concept will also be discussed, concepts of sovereignty and non intervention will also be discussed in relation to humanitarian intervention, lastly, a discussion on the need to intervene where there is gross violation of human rights will sum up the general literature on humanitarian

intervention. This general literature therefore proceeds to form the basis upon which the discussion of humanitarian intervention in Darfur is conceptualized.

Secondly, humanitarian intervention will be discussed in relation to the Darfur crisis. This specific literature will be important because firstly,

Different scholars have adopted varying definitions of the concept of humanitarian intervention as discussed in the background of the study above. However from the different definitions propounded by various scholars, certain elements must be present for humanitarian intervention to occur. From the various definitions I will adopt the definition by Sean²³ defining the term as “the threat or use of force by a state, group of states, or international organizations for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights.

The classical concept of the right of humanitarian intervention can be traced back to ancient times, but opinions of scholars, politicians, diplomats and state practice still disagree whether the right exists, and if it exists, what its precise normative scope is.²⁴ According to Verwey²⁵ humanitarian intervention understood in the classical sense involves forcible self-help by a state or group of states to protect human rights. Intervention was common in the Greek city

²³ D. M. Sean., *Humanitarian Intervention: The United Nations in an Evolving World Order*, (Pennsylvania: University of Pennsylvania Press, 1996), pp. 11-12

²⁴ F. K. Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention*, (The Hague, Netherlands: Kluwer Law International, 1999) p. 11

²⁵ W. D. Verwey, *Legality of Humanitarian Intervention after the Cold War*, in Ferris (Ed), *The Challenges to Intervene: A New Role for the United Nations?* (Uppsala: Life and Peace Institute, 1992) p. 114

state system, the Roman Empire and in the religious wars of the 16th and 17th Centuries.²⁶ The claimed rationale behind such an intervention is the belief, embodied in international customary law, in a duty under certain circumstances to disregard a state's sovereignty to preserve common humanity. Intervening in the affairs of another state has been a subject of discussion in public international law for as long as laws of nations were developed. Attitudes have changed considerably since the end of World War II, the Allied discovery of the Holocaust, and the Nuremberg trials. Following this, various scholars have discussed the legality and otherwise of the concept of humanitarian intervention;

English school solidarists like Vincent²⁷ have recognized that states should satisfy certain basic requirements of decency before they qualify for the protection which the principle of non intervention provides.

For Michael Walzer²⁸ humanitarian intervention is justified when it is a response (with reasonable expectations of success) to acts that shock the moral conscience of mankind. Walzer's solidarist argument is that states should be denied protection through the concepts of sovereignty and non intervention in those extra ordinary cases where governments are committing acts of mass murder, since they are guilty of crimes against humanity. For some solidarists such as

²⁶ H. Morgenthau for example observes that from the time of ancient Greeks to this day, some states have found it advantageous to intervene in the affairs of other states on behalf of their own interests and against the latter's will-H. Morgenthau, , 'To Intervene or not to Intervene,' (1967) *Foreign Affairs* Vol 45 pg 425, Phillipson, 'The International Law and Custom of Ancient Greece and Rome,' Vol 1 , 1911 pg 100-101, Vol 2 at p. 90

²⁷ R.J. Vincent & P. Watson, *Beyond Non-intervention*, in I. Forbes & M. J Hoffman (Eds), *Political Theory, International Relations and the Ethics of Intervention* (London: Macmillan, 1993) pp. 62 126

²⁸ M. Walzer, *Just and Unjust Wars, A Moral Argument with Historical Illustrations* (London: Hilen Lane 1978) p. 106

Vincent²⁹ the obligation is even stronger and the society of states has a duty to act.

Humanitarian intervention has often been justified based on social contract theory³⁰ which maintains that citizens normally cede power to a few individuals- their rulers- on the understanding that the rulers will promote their interests and welfare- the common good-. In situations where rulers engage in gross and widespread violations of human rights, they effectively break the social contract which underpins their legitimacy. Once the rulers' legitimacy is lost, humanitarian intervention is justified because in such a context, it entails the use of force against an effectively illegitimate regime.

For Walzer³¹ humanitarian intervention is also sometimes justified on the principle of *jus ad bellum*- just war- The Western Just War tradition has always recognized protection of the victims of cruelty and violence as a legitimate basis for the use of force.

For realists like Franck and Rodley³² humanitarian claims always cloak the pursuit of national self interests and legitimizing it would lead to states abusing it. Because of this, humanitarian intervention becomes a weapon of manipulation by the strong against the weak. A good example is Hitler's manipulation of humanitarian rationales to justify intervention in

²⁹ Supra

³⁰ The theory of social contract has been used at various times by philosophers like Plato, John Locke, Rosseau and Hobbes as an explanation for origins of society, as a justification for the current social structures, and as a justification for the current nature of society as opposed to other possible social systems.

³¹ M. Walzer., *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (1977); P. Ramsey, *The Just War: Force and Political Responsibility* (1968); R.Tucker, *The Just War: A Study in Contemporary American Doctrine* (1960). For a discussion of the specific applications of Western Just War theory to humanitarian intervention, see R. Phillips and D. Cady, *Humanitarian Intervention: Just Wars Pacifism* (1995); M. Fixdal and D. Smith, 'Humanitarian Intervention and Just War' *Mershon International Studies Review* Vol 42 No 2 (1998) p. 283

³² T. Franck & N. Rodley, 'After Bangladesh: The Law of Humanitarian Intervention by Military Force', *American Journal of International Law* (1973) p.290

Czechoslovakia in 1938. For Parekh³³ humanitarian intervention is action 'wholly or primarily guided by the sentiment of humanity, compassion or fellow feeling'

According to Franck and Rodley³⁴, humanitarian Intervention belongs in the realm not of law but of moral choice, which nations like individuals must sometimes make. This moral imperative cannot be legally recognized because of the dangers that such a legal right would be abused.

Bull³⁵ critiques humanitarian intervention on a moral basis. For him, the rules of society of states are to be valued only if they provide for the security of individuals who stand at the centre of his ethical code. Bull's critique of humanitarian intervention is a moral one as it views provision of international order as a necessary condition for the protection and promotion of individual wellbeing. The wellbeing of all individuals is better served by a legal rule that prohibits humanitarian intervention than by allowing it in the absence of agreement over what principles should govern such a right.³⁶

Traditionally, sovereignty has two aspects: freedom from outside interference and freedom to act as the sovereign sees fit within agreed borders.³⁷ Humanitarian intervention exposes the

³³B. Parekh, *Rethinking Humanitarian Intervention*, in B. Parekh (Ed) 'The Dilemmas of Humanitarian Intervention, special issue of the International Political Science Review,' Vol 18 No. 1 (1997) p. 54

³⁴ Footnote 25

³⁵ H. Bull, *The Anarchical Society: A Study of Order in World Politics* (Columbia: Columbia University Press 1977) pp. 97-98

³⁶ A. Mason & N.J. Wheeler, *Realist Objections to Humanitarian Intervention*, in B. Holden (Ed) *The Ethical Dimensions of Global Change* (London: Macmillan 1996) pp. 101-102

³⁷ R. Ibister, 'Humanitarian Intervention: Ethical Endeavours and the Politics of Interest,' International Security Information Services (ISIS), Briefing on Humanitarian Intervention, No.1 (2000) Available at http://www.isisuk.demon.co.uk/hiproject/no_1_paper_1.html, (visited on 29.4.09)

conflict between human rights and state sovereignty. Authors like Robert H. Jackson and Ian Browlie³⁸ refer to sovereignty as the pillar of international law. Thus placing a lot of emphasis on its importance at the expense of situations where it leads to relegation in protecting human rights. The norm against intervention originated in unwritten custom and was identified by scholars in international law. The first to use the term state sovereignty was Emerich de Vattel.

According to Lyman,³⁹ the question to be asked is “what right has the international community to intervene across borders to halt gross violations of human rights?” In his view, the answer in purely legal terms is none.⁴⁰ As a consequence, humanitarian concerns and human rights still take a back seat to the rights and legitimate interests of sovereign states. In practice, sovereignty remains the foundation of international law and non intervention expresses the correlative duty to respect the sovereignty of other states.

The Montevideo Convention on the Rights and duties of States⁴¹ was the starting point of the term sovereignty in treaty law. The Convention clearly provides that no state has the right to intervene in the internal and external affairs of another. Subsequently, when the UN Charter was adopted it also embodied the non intervention rule as seen in articles 2(4), 2(7) and 2(1) which provides for sovereign equality of states. The norm against intervention was also envisaged and reflected firmly in post UN Charter declarations of 1965 and 1970.

³⁸ I. Browlie, *Quasi states sovereignty, International Relations and Third World*, (Oxford: Oxford University Press, 1998) p. 287

³⁹ R. Jackson, ‘Armed Humanitarianism,’ *International Journal* Vol 47 (1993) p. 581

⁴⁰ R. M Lyman, ‘The Possibilities for Humanitarian War by International Community in Bosnia-Herzegovina between 1992-1995,’ *The Journal of Humanitarian Assistance, Occasional Paper No. 27* in Vol 2 (1997) pp. 55-58

⁴¹ 26th December, 1933, Article 8

Apart from Treaties and Declarations, there is also case law which seems to support non intervention. The International Court of Justice (ICJ) in *Nicaragua Vs USA*⁴² held that the principle of non intervention in the affairs of states is a rule of customary international law. From the foregoing, it is evident that this rule of non intervention and the sovereignty principle are firmly entrenched in international law. My aim is to contradict this by showing that there are instances where it becomes necessary to violate these rules for the good of an affected population as the population in Darfur.

Kobina Daniel and Sisule F. Musungu⁴³ in their study examine the paradigm shift within the African Union from inviolability of state sovereignty under the OAU to the interventionist AU under article 4(h) of the AU Constitutive Act⁴⁴. They then conclude by stating that presently state sovereignty is no longer sacrosanct.

Kritsiotis⁴⁵ views humanitarian intervention in the classical sense of use of armed force by states for the protection of the most basic human rights. On the other hand Kwakwa⁴⁶ conceptualizes humanitarian intervention more liberally. According to him, both forcible and non forcible measures by both states and non state actors are necessary for protection of human rights and any humanitarian assistance.

⁴² (1986) ICJ Rep. 14

⁴³ D.J Kobina and S.F Musungu, 'The African Union and the question of humanitarian intervention; A new dawn?' *East African Journal of International and Comparative Law* (2002) p. 62

⁴⁴ Article 4(h) of the AU Act confers upon the Union the right to intervene in a member state in the event of grave circumstances which is defined as war crimes, genocide and crimes against humanity.

⁴⁵ D. Kritsiotis., "Reappraising policy objections", *Michigan Journal of International Law*. Vol. 19 No.1005, (1998) p.66

⁴⁶ E. Kwakwa, "Internal conflicts in Africa, Is there a right of humanitarian intervention?" *African Yearbook of International Law* 2 (1994) pp. 9-12

The idea or concept of sovereignty, therefore, has a long history and is seen to be legally obligatory and not a practice of comity. However sovereignty must never be used to justify abuses of human rights. Intervention has been premised on the argument that sovereignty is not absolute but conditional on respect of human rights. Therefore the excuse of sovereignty should not be used in Darfur as the state is merely abusing it to the detriment of its nationals.

Review of Literature on Darfur

Available literature on the Darfur conflict tends to accuse the United Nations and western states of inaction in an obvious case that requires intervention. Bellamy⁴⁷ observes that western states will only intervene in humanitarian emergencies as they believe that vital security interests are at stake. Darfur crisis suggests that only the war on terror has fractured the fragile consensus over humanitarian intervention, but also that the problem of political will continues to be devil effective humanitarian intervention as it did over Rwanda.

According to Piiparinen⁴⁸ the United Nations, the African Union, the European Union, and NATO have in fact devised and implemented two innovative peacekeeping strategies in Darfur that have set more optimistic precedents for humanitarian intervention, namely, a new division of labour between regional and international organizations and a pragmatic turn in peacekeeping. By dint of these new strategies, intervening organizations have an opportunity to counterbalance the deep-seated problems that routinely affect humanitarian intervention operations. A more apposite description would be a "new division of labour" between regional

⁴⁷ A .J Belamy, 'Responsibility to protect or Trojan Horse? The crisis in Darfur and Humanitarian Intervention after Iraq,' *Ethics and International Affairs* Vol 10 No. 2 (2005) pp. 31-54

⁴⁸ T. Farer and T. D. Sisk (Eds); *Global Governance: A Review of Multilateralism and International Organizations*; P.Touko, *The Lessons of Darfur for the future of Humanitarian Intervention* Vol 13 (3) (United States of America; Lynne Rienner Publishers 2007) p. 365,

and international organizations. It signals a departure from the usual rivalry, unnecessary wrangling, and lack of coordination that have been typical of interactions between organizations. Although it would be premature to evaluate the success of the UN-AU-NATO-EU partnership in Darfur, an analysis of the initial stages of their cooperation reveals not merely a tendency to devolve the leadership and main responsibility for the protection of targeted civilians in Darfur to the AU, but also an unprecedented willingness of all organizations to coordinate their activities in Sudan.

A number of peace agreements have been signed with a view of ending the war in Sudan. The last one being the Doha Peace Accord signed on 23.02.2010. According to crisis group⁴⁹ these agreements will suffer lack of implementation, largely due to the intransigence of the National Congress Party. Thus unless the international community cooperates to support implementation of the peace agreements, return to north-south war and escalation of conflict in Darfur are likely.

In terms of dealing with the violence in Darfur, the United Nations has failed in its mandate as provided under Article 41 of the United Nations Charter. This is because the veto powers like China will not sanction application of article 41 as they have their own national self interest in Sudan.

“China has been the main problem, showing more concern for protecting its lucrative oil contracts in Sudan- China is Sudan’s largest oil investor- than for protecting thousands of Darfurian lives. Russia, protecting its own valuable arms sales to Khartoum, has seconded this cold-hearted unresponsiveness. These veto carrying Security Council members have opposed

⁴⁹ <http://www.crisisgroup.org/en/Search%20Results.aspx?keywords=darfur+peace+agreements>. Updated in 2010

targeted sanctions on, for example, Sudan's oil industry, travel bans, and seizure of assets on the government's ring leaders of the Darfur slaughter, or an arms embargo on the government...⁵⁰

Prunier⁵¹ provides a thorough account of the Darfur crisis origins, its unfolding, and the world's reaction to it. For Prunier, the complexity of the crisis does not preclude us to formulate an ethical judgment on the perpetrators of the crimes and their political sponsors, or on the foreign onlookers who responded with a mix of willful ignorance and moral posturing. Far from castigating the most egregious misconceptions of the country's politics and history, such as the opposition between "Arabs" and "Africans", he shows that categorizations based on racial profiling are part and parcel of the Sudanese political landscape, where they interact with the ideology of Arabism and the opposition between center and periphery. Although the history of Darfur as an independent Sultanate from the fifteenth century onward is relevant to understand what lies behind the conflict, Prunier shows that the origins of the current crisis are to be found in the mid-1980s, a period when a deadly drought, political infighting, foreign interference, ethnic polarization and the spillover from Chad's civil war transformed this westernmost province of Sudan into a boiling cauldron.

There are two building blocks to Prunier's narrative: first, explaining how many people in Darfur were willing to resort to violence and willing to maintain structures of 'command and control' for violent confrontations; and second, explaining how events in Khartoum pushed those

⁵⁰ 'The Collective International Responsibility to Protect: The Case for Darfur', *Northwestern Journal of International Human Rights*, *Northwestern University School of Law* vol. 4, no. 1 (2005), p. 120.

⁵¹ G. Prunier *Darfur: A 21st Century Genocide (Crises in world politics)* 3rd Edition. (New York: Cornell University Press 2008) p. 213

violent structures into total war. As events in Darfur have temporarily receded from the media's attention, reading this book is essential, not only to understand what has happened, but also to respond to what is to come.

The Journey of the lost boys⁵² unlike other books on Darfur provides first hand information on the happenings in Darfur. The author's experience and personal interviews with the "various lost boys" and others provides good reading as it enables readers get somewhat first hand information on the war. The book also contains extensive research of the political and historical events surrounding the long lasting civil war in Sudan. Read together with other scholarly books provides a wholesome understanding of the war in terms of explaining it using the conflict toolbox. This reading was relevant because the first hand interviews were linked to the various conflict topics discussed in different scholarly books for example on the causes of the war, conduct of the war and humanitarian intervention efforts, thus assisting readers to link the theories to the happenings on the ground.

Darfur Diaries⁵³ offers a sensitive encounter with Darfurians struggling at the edge of survival. It tells that story through the eyes of three independent filmmakers who travelled into Chad and Darfur in November 2004. At one level it is a book about the making of their film by the same name. At another level it is a deeply human book in its own right, not only for its interviews with refugees, IDPs, and rebel fighters, but because Jem Marlowe, its primary author,

⁵² J. Hecht, *The Journey of the Lost Boys: A Story of Courage, Faith and the Sheer Determination to Survive by a Group of Young Boys Called "The Lost Boys of Sudan"* (United States of America: Allswell Press 2005) pp. 140-158

⁵³ J. Marlowe, A. Shapiro, and A. Bain, *Darfur Diaries: Stories of Survival*, 2006 New York: Avalon Publishing Group 2006) pp. xxxv-xxxvi

and the other two videographers Aisha Bain and Adam Shapiro, show their own vulnerabilities in their quest to understand what is happening in Darfur. Other books portray the history of the Darfur conflict with more authority.⁵⁴ But *Darfur Diaries* is no less authentic and no less ambitious. Their stories and testimonies, woven together through the personal experience of the filmmakers, and conveyed with political and historical context, provide a much-needed account to help understand the Darfur war.

*Darfur: a new history of a long war*⁵⁵ is very detailed giving all the background on Sudan the country, its different tribes and groups as well as all of the individuals who have held or are seeking power in Sudan. The book also highlights the regional players and their motivations such as Libya, Chad, Eriteria who are seeking to keep Sudan destabilized for their own personal interests.

Flint and de Waal closely look at the links between the Sudanese government and "Arab" militias, called Janjaweed, claiming that there is enough evidence that proves that the government of Sudan is using the militias as a proxy in the Darfur conflict. They write about the Darfur rebel movements and their leaders, noting tribal divisions among the rebels and the crimes committed by the "African" rebels against "Arab" civilians. The authors examine the international community's reaction to the conflict and the Abuja peace talks that culminated in 2006 with the Darfur Peace Agreement that was signed by the Sudanese government and only one rebel faction, but did not bring peace. They end the book with a chapter titled *Endless Chaos*, having little hope that the Darfur conflict could be ended any time soon. It is important to note that the authors, for

⁵⁴ A. De waal & J. Flint, *Darfur: A New history of a long war (African Arguments* " (London: St. Martin's Press 2008) pp. 1-71

⁵⁵ See supra note 49

whatever reason, have not mentioned China anywhere in the entire book. This omission gives the book a major blow considering that China is a major player in the Darfur war having oil interests in Sudan and is preventing any sanctions or condemnation of the Khartoum regime as a permanent member of the UN Security Council. In my view, the authors have done an excellent job of also bringing to light the international aspects as well as the local and national issues that caused the first civil war/ conflict of north vs. south Sudan and then Darfur. Not to mention the problems that stem from the international community's poor foresight when it came to resolving the North vs. South Sudan issues and the treaty that has made it impossible to truly resolve the Darfur conflict.

Altunbas⁵⁶ observes that the challenges facing humanitarian intervention in Darfur are so grave and everyday more and more people are in dire need of assistance. He concludes by stating that individual states are entitled to intervene to protect Darfur civilians without either Security Council authorization or the Sudanese government's consent.

Henir⁵⁷ observes that the debate surrounding the issue of humanitarian intervention in Darfur has stagnated due to the restrictive theoretical parameters recently embedded in the discourse. The dominant pro-intervention perspective described in this text clashes with the dominant counter-perspective articulated by the realist position. Neither perspective offers a viable solution to the penumbra presented by humanitarian intervention and thus the discussion has effectively deteriorated into an otiose dialogue of the deaf. The text circumvents this impasse

⁵⁶ B. Altunbas, *Darfur Has become an even Greater Challenge for Humanitarian Action Medecins Sans Frontiers, Article 26, October 2007, pp. 114-115*

⁵⁷ A. Henir *Humanitarian Intervention After Kosovo: Iraq, Darfur and the Record of Global Civil Society* (Newyork: Palgrave Macmillan 2008) p. 2

by articulating a critique of the normative position that goes beyond the traditional realist and leftwing positions.

Kosovo has been discussed though very briefly as a case study of humanitarian intervention. This discussion is important because it provides a parallel scenario in which the UN eventually intervened despite enormous challenges of veto power in the SC. The scenarios in Kosovo and Darfur are similar as for both cases; the veto power was used as weapon to prevent military intervention in an area where there was gross violation of human rights. However, for the Kosovo scenario, despite challenges of the veto power, the UN was eventually able to intervene to avert the situation.

Humanitarian intervention in Kosovo is viewed differently by different scholars and has since posed some of the questions that have raised dilemma in the general study and implementation of humanitarian intervention. The operation in Kosovo raised major questions about the legitimacy of military intervention in a sovereign state. Was the cause just? were the human rights abuses committed or threatened by the Belgrade authorities sufficiently serious to warrant outside involvement? Did those seeking secession manipulate external intervention to advance their political purposes? Were all peaceful means of resolving the conflict fully explored? Did the intervention receive appropriate authority? How could the bypassing and marginalization of the UN system, by "a coalition of the willing" acting without Security Council approval, possibly be justified? Did the way in which the intervention was carried out in fact worsen the very human rights situation it was trying to rectify? Or - against all this - was it the case that had the North Atlantic Treaty Organization (NATO) not intervened, Kosovo would have been at best the site of an ongoing, bloody and destabilizing civil war, and at worst the occasion

for genocidal slaughter like that which occurred in Bosnia four years earlier?⁵⁸ Christopher Greenwood⁵⁹ similarly posited that events in Kosovo and, to a lesser extent, East Timor have made the questions whether there is a right of humanitarian intervention and, if so, when that right may be exercised and by whom into issues of the utmost importance.⁶⁰

It is necessary to consider whether the use of force by NATO met the requirement of proportionality recognized by international law.

Mitchell and Husanovic⁶¹ provide an alternative look at the humanitarian intervention in Kosovo and confirm, the post-war situation is marked by many unresolved problems that, taken together, hardly qualify the humanitarian status of the war's outcome.

Because of the flaws in Kosovo, Wheeler⁶² concludes that, "NATO's intervention is not a good model of humanitarian intervention". Indeed, Western ineptitude and questionable motives continue to affect the post-conflict transition.

From the literature reviewed, it is evident that most scholars support or favour the concept of humanitarian intervention. On the other hand there appears to be dearth of literature on non military humanitarian intervention. It is therefore hoped that the current study will significantly contribute literature in this area.

⁵⁸ ICISS Report *The Responsibility to Protect*, December 2001 <<http://www.iciss.ca/report2-en.asp#dilemma>> last updated in August 2010

⁵⁹ Professor of International Law, London School of Economics and Political Science. delivered as a conference paper at the 1999 Erik Casteen Symposium 'The Post-War Peace System: The End of an Era?' held at the University of Helsinki.

⁶⁰ *Finnish Yearbook of International Law*. Helsinki, Finland : Kluwer Law, 2002, pp. 141-175.

⁶¹ K. Booth (ed) , *The Kosovo Tragedy: The Human Rights Dimensions*. (Portland, OR: Frank Cass, 2001) p. 386.

⁶² N. J Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, (New York: Oxford University Press, 2001) p. 352.

THEORETICAL FRAMEWORK

This study will proceed on a natural law theory which recognizes that apart from the legal norms, there are higher norms, moral values and humanity. The word “natural” in natural law refers to an idea that provides the foundation of natural law- namely the reason why natural law ought to be obeyed. Natural law is thus that which furthers the attainment by men of the ends that nature has made it man’s nature to seek to achieve.

Natural law theory is a philosophical and legal belief that all humans are governed by basic innate laws, or laws of nature, which are separate and distinct from laws which are legislated. Legislated laws are sometimes referred to as “positive laws” in the framework of natural law theory, to make a clear distinction between natural and social laws. Natural law theory has heavily influenced the laws and governments of many nations, including England and the United States, and it is also reflected in publications like the Universal Declaration of Human Rights. The theory also suggests that certain concepts are universal and should apply everywhere.

To Hobbes ⁶³the state of nature in which man lived before the social contract was “a war of every man against every man”. A condition of internecine strife in which the life of man is “solitary, poor, nasty, brutish and short”

Locke argues that human beings in the state of nature are free and equal, yet insecure in their freedom. When they enter society they surrender only such rights as are necessary for their security and for the common good. Each individual retains fundamental prerogatives drawn from natural law relating to the integrity of person and property (natural rights). This natural rights

⁶³ T. Hobbes, *The Leviathan Part 1*, E. Curley (ed) Hackett, Indianapolis (1994 (1651-1668))

theory provided a philosophical basis for both the American and French revolutions. Natural law and the subsequent natural right thinking has had immense effect in general political theory to date. The American declaration of independence (of the year 1776) for example claims to derive its authority from the “Laws of Nature” and also makes reference to “inalienable rights” of human beings. Chapter IV of our Kenya Constitution also makes provisions for human rights and freedoms.

The modern discussions of “natural law theory” derive from the 1958 “Hart-Fuller Debate” in the *Harvard Law Review*⁶⁴. Wherein he demarcated legal positivism from natural law from the perspective of the conceptual separation of law and morality. Lon Fuller responded where he argued against a sharp separation of law and morality. Whereas Fuller’s position was based on natural law theory, it was quite different from the traditional perspective of natural law theory, since it laid emphasis on the moral content of law. In this regard, Finnis argued that a morally neutral theory of law is neither possible nor valuable; and natural law theory focuses on how, whether and when positive law adds to our set of moral obligations. In his opinion, it only does this when the rules enacted are consistent with moral principles.

Thus in the context of this study, there is a growing recognition that the principle of sovereignty of states cannot and should not be used as a barrier to humanitarian intervention. This is because issues of human rights are universal thus applicable to all states. According to Lon

⁶⁴ The “debate” began when Hart published his Holmes Lecture (entitled *Positivism and the Separation of Law and Morals*) delivered at Harvard Law School in April 1957 and published in *Harvard Law Review* in 1958. The reply was given by Fuller in his article “Positivism and Fidelity to Law – A reply to Prof. Hart”, also published in 1958 in *Harvard Law Review*.

Fuller, law must have morality in it.⁶⁵ Thus when sovereignty comes into conflict with human rights, the latter must prevail.⁶⁶

Natural law theory is relevant to this study as rules of customary international law on human rights have their roots in this theory. In the international system there are norms that apply to all in the system and must be respected by all, where such norms are disregarded by a host state it would automatically call for the actors in the international system to intervene to save lives of nationals of the state in question.

HYPOTHESES

This study aims at testing the following hypotheses;

1. Current government in Sudan does not provide conducive humanitarian space thus making humanitarian space a major challenge in Darfur
2. There is a basis for humanitarian intervention in Darfur region of Sudan
3. Requirement of consent of host government before an intervention is carried out as a general principle of humanitarian intervention does not apply in the Darfur situation
4. The doctrine of state sovereignty and concept of non intervention are tools used for gross violations of human rights in Sudan. This poses a challenge to intervention.

⁶⁵ L. Fuller on morality and law- he states that there is obvious connection between law and morality and every law must have a minimum moral content. Quoted in Genn R. Jurisprudence and legal theory, 18

⁶⁶ F. Teson, *Humanitarian Intervention: An Inquiry into Law and Morality*, 2nd (ed) (NewYork: Transnational Publishers Inc 1997)p. 272:

METHODOLOGY OF RESEARCH

Both primary and secondary data will be consulted in conducting this research. Primary data will include structured interviews with key informants being Sudanese refugees in Kenya and Sudanese Embassy officials, Individuals who have worked in Sudan and other conflict areas, individuals working in NGO world and have extensively worked in Darfur region and other conflict areas and finally academicians in the field of conflict. (List of interviewees attached in Appendix 1)

Secondary data will include books, journals, published reports, statistics and the internet.

The data from the semi-structured interviews will enhance the study as the responses are first hand information by the researcher and will be analyzed with a view to adding on to already existing literature on Darfur crisis and possible recommendations to end the humanitarian crisis currently on the ground.

On the other hand, secondary data will provide rich background, history and current data on the topic under study within minimal time duration. With the primary data at hand it will be possible to tie the two sources of information with a view to adding on to the already existing literature on the ongoing humanitarian crisis in Darfur region.

Use of semi-structured interviews has its advantages, firstly, data collection by way of an oral interview allowed great flexibility in the questioning process, secondly, it gave the researcher greater control over the interviewing situation. Interviews ensured that the respondents answered the questions in the appropriate sequence. I conducted the interviews in private; ensuring that the respondents do not consult one another when giving answers and also to reassure the respondents that the information was given in confidence and was only meant for this study. Thirdly, the

personal interviews resulted in a higher response rate than I would receive in a mail questionnaire. This is because respondents who would not have responded to an impersonal mail questionnaire will often respond to a request for a personal interview. This is also helpful where literacy levels and language barrier may be an impediment. Fourthly, personal interviews allowed the interviewer to collect supplementary information about the respondents. Moreover, an interview situation often yields spontaneous reactions that the interviewer can record and that may be useful in the data analysis stage.⁶⁷

When conducting the personal interviews I noted the following as disadvantages; firstly, the cost of conducting the interviews was significantly high. Secondly, the very flexibility that is the chief advantage of interviews leaves room for the interviewers' personal influence and bias. The lack of standardization in the data collection process also makes interviewing highly vulnerable to interviewer bias. Although interviewers are instructed to remain objective and to avoid communicating personal views, they nevertheless give clues that may influence the respondents' answers.⁶⁸ Thirdly, i lacked the anonymity of the mail questionnaire. Thus the respondents may feel threatened or intimidated by the interviewer especially if a respondent is sensitive to the topic or some of the questions.

Data collected from embassy officials and Sudanese leaving in Kenya had to be compared with data collected from NGOs, persons who have worked in conflict regions and from academicians. This is because they (embassy officials and Sudanese refugees) are likely not to

⁶⁷ D. Nachmias and C.F. Nachmias *Research Methods in the Social Sciences* 5th Edition (New York: Replika Press Pyt, Ltd, 1996) pp. 232-238

⁶⁸ B. J Williamson.; A.D Konk and R.J Dalphin *The Research Craft* (Boston: Little Brown, 1977) p. 32

give objective response to the questions posed to them because of either their status or the offices they hold.

Data collected from the NGOs dealing with conflict and individuals who have worked in conflict areas and academicians was very objective as they gave the factual position of the humanitarian situation in Darfur.

First person accounts or oral interviews collected in this study and narrated by victims and others are capable of breaking through the numbing mass of numbers in that they provide the thoughts, the passions and the voices of those who experienced and/or witnessed the terrible calamity now referred to as genocide. Although valuable, first person accounts are only of importance when the correct procedures are followed in their collection and if they are accurate. The same research standards used to develop historical works need to be applied in gathering, recording, authenticating and interpreting eye witness accounts.⁶⁹ In that respect I ensured that the data collected from victims was accurate.

The limitations of interviews through first person accounts was overcome by ensuring that the interviews were done objectively to avoid interviewer bias and considering that issues of the Darfur war being sensitive, the respondents were assured that the information they give is for academic research only and that it will be treated with confidentiality the confidentiality it deserves . This helped in getting accurate information from the respondents. However as indicated above, the information from the embassy officials and Sudanese refugee leaving In Kenya was

⁶⁹ S. Totten and W. S Parsons (Eds) *Century of genocide: Critical Essays and Eyewitness Accounts* 3rd Edition (Madison Avenue New York: Routledge 2008) P. 5

compared against other information given by those to be non partisan and likely to be objective in their responses.

OVERVIEW OF CHAPTERS

Chapter 1 will be the proposal to the research project and will offer a general introduction into the subject of humanitarian intervention, discuss the statement of the problem, objectives of the study, justification of the study, literature review, case studies of humanitarian intervention, theoretical framework, methodology of research and lastly limitations of the study.

Chapter 2 will be the conceptual chapter discussing different debates by various scholars on the subject of humanitarian intervention

Chapter 3 will discuss Darfur as a case study of humanitarian intervention.

Chapter 4 will be a critical analysis of Humanitarian intervention as a mode of third party intervention in conflicts.

Chapter 5 will provide a summary of the first four chapters then in the end, provide the conclusion and possible recommendations.

LIMITATIONS OF THE STUDY

This study looks at the challenges of humanitarian intervention in Africa and Darfur taken as a case study. Issues of Darfur are very broad thus I had to have the scope of the study is limited to the years 2003-2008.

Since the Darfur conflict is an ongoing one, every time new issues arise therefore making the literature continuous thus one has to refer to various books on the conflict to get a wholesome overview taking into account current issues at any given time.

Because the conflict in Darfur is still ongoing, this work should be seen as a continuous project open to be updated by others who will write on it in the future.

Despite its limitations the study will make a serious attempt to discuss the concept of humanitarian intervention in Darfur and come up with concrete recommendations and conclusions on what needs to be done in the case of Darfur.

CHAPTER 2

DEBATES ON HUMANITARIAN INTERVENTION

When a massive and systematic violation of basic human rights is committed by the authorities of one state, can other states intervene forcefully to halt the violation?¹

INTRODUCTION

There is no consensus among international relations scholars on the legality and legitimacy of humanitarian intervention. The dilemma on humanitarian intervention can be solved in a number of different ways. One approach is that humanitarian intervention is an unlawful action, which has no place in the international society. Another approach sees humanitarian intervention as lawful in certain instances in which states are permitted to intervene at their own discretion.²

The debate over humanitarian intervention mainly consists of four questions: firstly, is the humanitarian intervention compatible with international law, and if it is, secondly, when it must take place, thirdly by whom, and fourthly how? These four questions compose the starting-point; these questions form the object of the study in the phenomenon of humanitarian intervention.

The critical issue in any debate on humanitarian intervention is the need to harmonize intervention with the principle of sovereignty, which in essence requires that a sovereign state be treated as an independent political unit, its territorial integrity be respected, and it be allowed to pursue its domestic affairs without external interference. These stipulations are essentially those

¹ W. Koji (Ed) *"The Debate on Humanitarian Intervention, Humanitarian Intervention: The Evolving Asian Debate;"* (Tokyo: Japan Center for International Exchange, 2003) pp. 11-18.

² H. Grotius, summarized by S. Chesterman, *Just War or Just Peace; Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001) p. 14.

regulating inter-state relations that have evolved since the Treaty of Westphalia and have been codified as core principles of international law.³

In terms of intra-state affairs, however, sovereignty represents the result of a social contract between the government and the governed/citizens to ensure good governance. Some of the intra-state components of sovereignty already have been embedded in humanitarian norms—such as in the case of the United Nations' 1948 Universal Declaration of Human Rights, the Genocide Convention of 1948, and the four Geneva Conventions signed in 1949—but it is only in the post-cold war world that democracy, human rights, and the rule of law have been recognized by the international community as principles ensuring good governance with legitimacy and accountability.⁴

It is against this background that the debate on the legitimacy of humanitarian intervention must be continued, in order to clarify whether intervention can be justified on the basis of general international law. Holzgrefe⁵ comes up with four ethical divides on the subject of humanitarian intervention.

The first ethical divide emanates from natural theories of international justice which contends that morally binding international norms are an inherent feature of the world; a feature that is discovered through reason or experience.⁶ According to these theories there are certain facts about the world that cannot be altered by human beings. In contrast to this the consensualist

³ See Supra note 65

⁴ See Supra note 65

⁵ J.L. Holzgrefe and R.O. Keohane (Eds), *Humanitarian Intervention: Ethical, legal and political dilemmas* (Cambridge, Cambridge University Press, 2003) pp. 18- 55

⁶ See Supra note 68 at p. 19

theories of international justice on the other hand believe that the moral authority of any international norm comes from the subjects of that particular norm. This therefore means that just norms are made and derive their authority from their subjects thus they are not discovered.

The second ethical divide is the individualist theories of international justice which is concerned mainly with the wellbeing of the individual. This is in contrast to the collectivist theories of international justice which maintain that groups are proper objects of moral concern. Collectivists view groups “in non-aggregative terms, that is, without reference to the rights, interests or preferences of the individuals” that compose them.⁷ For collectivists, groups can have interests independent of and potentially in conflict with those of their members.

The third is the egalitarian theories of international justice which claim that objects of moral concern must be treated equally. On the other hand, and in contrast to this the in-egalitarian theories require or permit objects of moral concern to be treated unequally.

Finally, we have the Universalist theories which assert that all relevant agents are the proper objects of moral concern. In contrast to this we have the particularist theories holding that only certain agents are the proper objects of moral concern.

In the conflict under review, the utilitarianism doctrine is best suited to explain the need for humanitarian intervention in the conflict rocked area of Darfur. This doctrine maintains that an action is just if its consequences are more favourable than unfavourable to all concerned. For utilitarians, conduct is never good or bad in itself; it is its effect on human beings that make it

⁷ R. T. Fernando, *A Philosophy of International Law* (Westview Press, Boulder, 1998)p. 41

good or bad.⁸ This doctrine is naturalist because it holds that human well being is an intrinsic good. On the other hand, it is individualistic, egalitarian and Universalist because each is to count for one and no one for more than one.⁹ Act-utilitarianism is not best suited to explain the doctrine of humanitarian intervention, as it argues that humanitarian intervention is only just if its consequence is to improve/increase the wellbeing however if its immediate consequence is to decrease the aggregate well being then it is unjust. An act utilitarian would thus argue that an intervention in Darfur is just as it will lead to reduction of deaths and human suffering in this region. Needless to say, act utilitarianism is criticized for asking too much and too little of people. It asks too much because it requires people to aid anyone who would gain more from such assistance than the people assisting would lose by giving it. It thus obliges people to help others to the point where their own wellbeing is reduced to the same level as that of the people they are assisting.¹⁰ Jeremy Bentham thus writes that

“It is unjust if a nation should refuse to render positive services to a foreign nation, when the rendering of them would produce more good to the last mentioned nation than could reduce evil to itself. For example, if the given nation, without having reason to fear for its preservation.....should obstinately prohibit commerce with them and a foreign nation or if when a foreign nation should be visited with misfortune, and require assistance, it should neglect to furnish it”.¹¹

Such expectations are well beyond the moral capacities of ordinary men and women. This doctrine asks too little because it does not prohibit some actions that are out rightly wrong.

⁸ See Supra note 68 at p. 20

⁹ Jeremy Bentham' phrase quoted in R. M. Hare, “Rules of War and Moral Reasoning” 1 Philosophy and Public Affairs (1972), p. 170

¹⁰ P. Singer, “Famine, Affluence and Morality,” 1 Philosophy and Public Affairs, (1972), p. 231

¹¹ J. Bentham, “Principles of International Law,” in John Bowring ed., The Works of Jeremy Bentham (Russell & Russell, New York, 1962), Vol II, pp. 538-539

Supporters claim that any sort of military action is permissible if it saves more lives than it loses.¹² For this reasons, act utilitarianism is thus sharply at odds with the natural law view that some harms are forbidden without exception or qualification.¹³ For rule-utilitarians a specific class of actions is the proper object of moral evaluation, meaning, an act is just if it conforms to a set of rules whose general adoption increases aggregate well being more than the general adoption of any other set of rules. Neither arguments by the rule and act utilitarianists is objective thus their arguments cannot be said to be conclusively accurate/true

Natural law is the naturalist doctrine that human beings have certain moral duties by virtue of their common humanity.¹⁴ These duties are discovered through reason thus available to anyone one capable of rational thought, these are universal and immutable.¹⁵ Humanitarian intervention is one of these moral common duties. For Boyle¹⁶, the general duty to help others is the most basic ground within this common morality for interference in the internal affairs of one nation by outsiders including other nations and international bodies. Grotious is a famous proponent of this view. He argues that, where a tyrant “should inflict upon his subjects such treatment as no one is warranted in inflicting,” other states may exercise a right of humanitarian

¹² A Military action (e.g a bombing raid) is permissible only if the utility..... of victory to all concerned, multiplied by the increase in its probability if the action is executed, on the evidence (when the evidence is reasonably solid, considering the stakes), is greater than the possible disutility of the action to both sides multiplied by its probability” R.B Brandt, “Utilitarianism and War,” *1 Philosophy and Public Affairs* (1972), pg. 157

¹³ Supra note 68 p. 22

¹⁴ Supra note 68 p. 25

¹⁵ Natural law is “right reason in harmony with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions..... we cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter of it.” Marcus Tullius Cicero, *De Re Public and De Legibus* (Harvard University Press, Cambridge, Mass., 1928), p. 211

¹⁶ J. Boyle, *Natural Law and International Ethics*, T. Nardin and D. Mapel, (Eds)*Traditions of International Ethics*, (Cambridge: Cambridge University Press 1991) p. 123

intervention.¹⁷ Grotius bases this right on the natural law notion of the universal community of humankind.¹⁸ Natural theorists defending a duty of humanitarian intervention look at it as an imperfect duty whereby states discharge it at their own discretion. With this kind of circumstances, Darfur has continued to suffer as no state is under an obligation to intervene and at the same time all states may have other matters that they may consider more urgent than intervention in another state. For Walzer, the general problem,

is that intervention, even when it is justified, even when it is necessary to prevent terrible crimes- even when it poses no threat to regional or global stability is an imperfect duty- a duty that does not belong to any particular agent. Somebody ought to intervene, but no specific state or society is morally bound to do so. And in many of these cases, no one does. People are indeed capable of watching and listening and doing nothing. The massacres go on, and every country that is able to stop them decides that it has more urgent tasks and conflicting priorities; the likely costs of intervention are too high.¹⁹

In my view, for the imperfect duty of humanitarian intervention to work well, the perfect duty of non intervention must be ignored especially where there are gross violations of human rights.

Humanitarian intervention gets its legality from the fact that it is a norm incorporated in international conventions including the UN charter, and human rights conventions humanitarian intervention is also part of customary international law, in that when a state carries out humanitarian intervention, the act will most likely be viewed as a general practice accepted as

¹⁷ H. Grotius, *De Jure Belli Ac Pacis Libri Tres* (Oxford : Oxford University Press, ,1925), Book II, ch.25 sec 8, vol. II p. 584

¹⁸ Supra note 80 pp. 472-473

¹⁹ M. Walzer, *Just and Unjust Wars*, 3rd Edition (New York: Basic Books, 2000) p. xiii

aw.²⁰ The concept of humanitarian intervention is at its core about protecting people. It rests on the premise that when gross abuses of human rights are taking place, when innocent people are being maimed and killed, then the international community cannot and should not stand idly by. What precisely should be done and by whom is a topic of great importance and debate. But that something should be done to stop such abuses is unquestionable. As Kofi Annan former UN Secretary General stated unequivocally "massive and systematic violations of human rights, wherever they take place, should never be allowed to stand." As the veil of the cold war was lifted in the early 1990's, a new type of conflict became apparent. Wars between states, which had remained hidden as US Soviet proxy wars, emerged for what they truly were – civil wars in which large scale civilian suffering was commonplace

Following the legal dilemma of Kosovo, the failures of the Rwandan Genocide, and the humanitarian disasters of the Somalia and Bosnia and Herzegovina, the Canadian Government established the International Commission on Intervention and State Sovereignty (ICISS)²¹ and asked it to explore when, if ever, the international community has the right to intervene in a sovereign state in the name of humanitarian protection? Since 2005, a clear case of the Responsibility to Protect has emerged. While the international community was signing the Responsibility to Protect into UN protocol, the genocide in Darfur was emerging as the first genocide of the 21st century. Despite much talk, little has been done to halt the killing, and the

²⁰ Article 38(1) of the statute of the International Court of Justice. Although this Statute is technically only binding on the International Court of Justice, it is widely accepted as the authoritative statement of the sources of international law.

²¹ <http://www.iciss.ca/report2-en.asp> visited on 22/9/09, last updated in August 2010

concept of Responsibility to Protect, so lauded in the halls of the General Assembly, has yet to be applied to save the over 200,000 people who have so far been killed in Sudan.

To ascertain whether an intervention is necessary, it is important to weigh all factors to see if the intervention has positive results in terms of being able to save lives that would otherwise have been lost or continued to suffer had it not been for the intervention. Therefore, if states are unwilling or unable to protect the lives and liberties of their citizens- if they degenerate into anarchy and tyranny- then the duty to safeguard these rights reverts to the international community.²² Every one of the big cases generated major international controversy – usually too late to be useful, and never enough to settle the issues of principle once and for all, including the role and responsibility of the United Nations, and the nature and limits of state sovereignty. By the dawn of the new century the debate remained wholly inconclusive. Intense disagreement persisted as to whether there was a right of intervention, how and when it should be exercised, and under whose authority.²³

Former UN Secretary General Kofi Annan is one of those who have tried hardest to get some sense and coherence into it all. Deeply troubled by the issues and the inconsistency of the international response, he challenged the General Assembly in 1999, and again in 2000, to find a way through these dilemmas, posing the issue in the starkest of terms:

² Supra note 68 p.52

³ The debate about humanitarian intervention can be traced as far back as the seventeenth century to the works of Alberico Gentili and Hugo Grotius. See for example Theodor Meron 1991, "Common Rights of Mankind in Gentili, Grotius and Suarez," *AJIL* 85, 110-116; see also Oliver Ramsbotham 1997, "Humanitarian Intervention 1990-1995: A Need to Reconceptualize?" *Review of International Studies* 23, pp. 445-468, p. 446.

...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?

Annan's own view was clear. "Surely no legal principle – not even sovereignty – can ever shield crimes against humanity", he said in 1999. And as recently as his Nobel Peace Prize Lecture in Oslo he was still saying it: "The sovereignty of States must no longer be used as a shield for gross violations of human rights".

The notion of a state's sovereignty being conditional on an ability and willingness to protect its citizens was re-affirmed in 2004, in the Secretary General's High-Level Panel on Threats, Challenges, and Change, which endorsed "The Responsibility to Protect", as an emerging norm. The concept was officially affirmed by the UN in the 2005 World Summit²⁴ Outcomes document which stated that UN had the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. In so doing, the last hurdle to the legality of humanitarian intervention had been overcome.

For Thomas Aquinas, the utopians go to war "to protect their own land, to drive invading armies from the territories of their friends, or to liberate an oppressed people, in the name of humanity, from tyranny and servitude."²⁵

The protestant Hugo Grotius is a key figure in debates over intervention to uphold natural law. The international morality he defends is one that permits such intervention but does not

²⁴ Resolution adopted by the UN General Assembly 60/1 2005 world summit outcome pp.27-31

²⁵ T. More ,Utopia (1516), ed.. Logan M.G and Adams R., (Cambridge University Press, 1989) pp. 87-88

demanded it. Grotius's "thin" or minimal morality requires human beings to refrain from injuring one another but does not require that they help one another. The basis for this morality is self preservation. Because the desire for self preservation is inherent in their nature, human beings cannot be blamed for acting on it. And if they have a right to preserve themselves, they must also have the right to acquire the things needed for life and defend their lives and possessions.²⁶ According to the new understanding of international relations, any government has the right to enforce natural law against another government that is guilty of violating it. In the "state of nature" postulated by Grotius and other 17th century natural theorists, there is no enforcing power superior to that of the sovereign of each state. There is a right of punishment owned by every sovereign in the international state of nature therefore justifies humanitarian intervention at least in some situations.

The natural law argument for humanitarian intervention continued to erode during the 18th and 19th centuries as the view that international law is "positive law" based on the will of states emerged. However, natural law did not simply disappear; it continued to march under the banner of morality. Common morality are principles that constitute a common moral world in which human beings have rights not as members of this or that community but as members of the human community. Humanitarian intervention is a response to grave human rights violations, and the most basic human rights are universal moral rights- rights in other words, that rest on the principles of common morality.

²⁶ H. Grotius., *D.J. Praedae* (1604), published in English as commentary on the law of prize and booty, trans, Williams G.L, (Oxford: Clarendon Press 1950) p. 10

Utilitarianism is the idea that the moral worth of an action is determined solely by its contribution to overall utility: that is, its contribution to happiness or pleasure as summed among all people. It is thus a form of consequentialism, meaning that the moral worth of an action is determined by its outcome. Utilitarianism is described by the phrase "the greatest good for the greatest number of people". Therefore, it is also known as "the greatest happiness principle". Utilitarianism can thus be characterized as a quantitative and reductionist approach to ethics. For utilitarians an action's consequences are everything. Conduct is never good or bad in itself. Only its effects on human well being make it good or bad. Utilitarianism is naturalist because it holds that human well being is an intrinsic good. It is individualist, egalitarian, and Universalist because, in Jeremy Bentham's phrase, "each is to count for one and no one for more than one."²⁷

The liberal argument for intervening by force to end or prevent serious human rights abuses relies on twin assumptions of liberal moral and political theory: that the primary purpose of governments is to protect human rights, and that victims of grievous injustice are entitled to outside help. Humanitarian intervention is legitimate when it is directed at suppressing human rights abuses and complies with the doctrine of double effect. This view rejects well-known objections: that interventions undermine respect for international law, that interventions are comissive acts and thus more objectionable than non-interventions because these are simple omissions, that humanitarian interventions are objectionable because they kill innocent persons, and that humanitarian interventions undermine global stability.²⁸

²⁷ Quoted in R.M. Hare "Rules of War and Moral Reasoning," 1 *Philosophy and Public Affairs* (1972), p. 170

²⁸ T.R Fernando., *The Liberal Case for Humanitarian Intervention*. FSU College of Law, Public Law Research Paper No. 39., 2001 Available at SSRN: <http://ssrn.com/abstract=291661> or DOI: 10.2139/ssrn.291661 pp.3-5

There is no doubt that the moral case for humanitarian intervention is convincing. Who would not want to help those in dire need? The reality, however, is somewhat more complex. More often than not, the use of force for humanitarian purposes simply causes more problems than it solves.

The myriad of arguments against humanitarian are as diverse as their wide array of proponents - from radical leftists to isolationist conservatives, from African development workers to Chinese leaders. All caution against promoting a practice whereby militaries are used, countries are invaded and wars are waged in the name of humanitarianism.

The solidarist, or Grotian, position provides a very different conception of the international society than pluralism does. 'Where pluralists are fearful of the consequences for order of legitimizing an individual right of humanitarian intervention in the society of states with diverse conceptions of justice, Grotians assert that there is a duty of collective humanitarian intervention in cases of extreme human suffering. This conception of international society assumes that individuals are its ultimate members and that they have rights and duties in international law: individuals are legitimate subjects and not objects of international society.'²⁹

Jane Stromseth has identified four distinct approaches that challenge the legality/legitimacy of humanitarian intervention.³⁰

²⁹ N.J. Wheeler, 'Pluralists and Solidarist conceptions of International Society', *Millennium: Journal of International Studies*, XXI (1992) p. 98.

³⁰ J. Stromseth, 'Rethinking Humanitarian Intervention' in J.L. Holzgrefe and R.O. Keohane (eds.), *Humanitarian Intervention Ethical, legal and political dilemmas* (Cambridge, Cambridge University Press, 2003) p. 241.

First, humanitarian wars are rarely, if ever, fought for purely humanitarian reasons. National interest is almost always a critical factor governing the motives of the intervening states. For realists like Franck and Rodley,³¹ unilateral humanitarian intervention always cloak the pursuit of national self interest and that legitimizing it would lead to abuse by states. In Darfur China has its own national interests to protect in the war torn area and for that reason would not be interested in having an end to the war. More often than not, geopolitics rather than human interests drives humanitarian intervention. In Kosovo, for example, there were clear NATO interests at stake, in Rwanda there were not. There are two costs to the role of national interest in humanitarian operations. First, if the primary interest is geopolitical, rather than humanitarian, then the means of force used will bias the former over the latter - such as the near exclusive reliance of airpower in Kosovo. Second, states that intervene for purely humanitarian reasons quickly lose interest and go home (such as is Haiti, Somalia); those that stay almost always have dubious motives.

The Second approach 'categorically affirms that military intervention in response to atrocities is lawful only if authorized by the UN Security Council or if it qualifies as an exercise of the right of self-defence'³² This approach is distinct from the pluralist approach in that it accepts that there are instances where the international community must intervene for humanitarian protection purposes. However, it sets out a very stringent demand as to when such interventions can take place; consent or at least tacit approval by all five permanent members of the UN Security Council is required. The strength of this approach lies in this stringency

³¹ T. Franck & N. Rodley ., 'After Bangladesh: The Law of Humanitarian Intervention by Military Force', *American Journal of International Law* (1973) p 290

³² *Supra* note 94

functioning as a check on would be interventionists, making it difficult for them to abuse a humanitarian intervention doctrine by disguising interventions motivated by self-interest as 'humanitarian.' However, since our aim goes beyond limiting power-abuse and includes assuring that all cases of supreme humanitarian emergency be met with action, this approach appears to be insufficient.³³ In the Darfur conflict in fact we see the veto power being used by China and Russia in preventing an intervention in the war torn area with evident instances of genocide and crimes against humanity. It is enough to look at Security Council practice in the 1990s to confirm this. After authorizing interventions against Iraq and Somalia, the Council was unable to respond to the atrocities conducted by the Rwandan state against Tutsis and moderate Hutus in 1994. Also during the Kosovo crisis in 1998-99 the Council was deadlocked. The problem with relying on Security Council authorization appears to be twofold. Firstly, making intervention contingent on the consent of the permanent members means that there is a danger that the narrow interests of these states can obstruct interventions that should have taken place from a purely 'humanitarian' point of view. Secondly, assigning sole responsibility for humanitarian intervention to the Security Council increases the danger that supreme humanitarian emergencies are not responded to in cases where the Council fails to act like the case of Darfur.

The third approach is based on the argument that while humanitarian intervention without a UN mandate is technically illegal under the rules of the UN Charter, 'it may be morally and politically justified in certain exceptional cases.'³⁴ As Franck argues, 'International law, like

³³ N. J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, (New York: Oxford University Press, 2001) p. 41

³⁴ J. Stromseth, 'Rethinking Humanitarian Intervention' in J.L. Holzgrefe and R.O. Keohane (eds.), *Humanitarian Intervention, Ethical, legal and political dilemmas* (Cambridge, Cambridge University Press, 2003) p. 243.

domestic law, also has begun gingerly to develop ways to bridge the gap between what is requisite in strict legality and what is generally regarded as just and moral.³⁵ This approach suggests a reconciliation of sovereignty with humanitarian intervention, the former being the rule and the second being the exception. The distinct advantage of the 'excusable breach' approach is that, by placing humanitarian intervention outside the realm of legality, it highlights the exceptionality of the cases in which intervention is warranted. However, against this it can be argued that it is unsatisfactory to label as 'illegal' action that the majority of the states view as morally and politically justified.³⁶ As Stromseth argues, the tension between legality and legitimacy would yield problems over time.³⁷ Furthermore, because the 'excusable breach' approach is based on the intervening states' need to 'excuse' their action and not on the duties that these states have to act in response to atrocities, it is unsatisfactory as a basis for establishing humanitarian intervention as a responsibility.

The fourth approach is the 'customary law evolution of a legal justification for humanitarian intervention in rare cases.'³⁸ This approach differs from the 'excusable breach' approach in that it rather than keeping humanitarian intervention firmly outside the realm of legality, it opens for a 'narrow, evolving legal exception and justification for such intervention 'in light of concrete circumstances, and in light of the reasons that states and the UN Security

³⁵ T.M. Franck, 'Legal interpretation and change', in J.L. Holzgrefe and R.O. Keohane (eds.), *Humanitarian Intervention, Ethical, legal and political dilemmas* (Cambridge, Cambridge University Press, 2003) p. 214.

³⁶ J. Stromseth, 'Rethinking Humanitarian Intervention' in J.L. Holzgrefe and R.O. Keohane (eds.), *Humanitarian Intervention, Ethical, legal and political dilemmas* (Cambridge, Cambridge University Press, 2003) p. 244.

³⁷ *Supra* note 100

³⁸ *Supra* note 100

Council find persuasive over time.³⁹ This approach is very useful because it leaves room for states to develop practices of humanitarian intervention and thereby incorporating it into customary international law. It is important to note that state practice has, until now, been too ambiguous to support the development of such a law. However, there are good reasons to believe that a continuous practice of humanitarian intervention over time has the potential to change this.⁴⁰ However, this is a very difficult and uncertain process. It requires not only that the behaviour is 'repeated consistently by a preponderance of states over a considerable period of time,⁴¹ but also that there must be 'a shift in the legal consciousness of all or most states as to the juridical status of the behaviour.'⁴²

Advocates of the fourth approach favour a codification of a clear legal doctrine or 'right' of humanitarian intervention. Proponents argue that such a 'right' or 'doctrine' should be established through some formal or codified means such as a UN Charter amendment or a UN General Assembly declaration.⁴³ The advantage of this approach is that by codifying humanitarian intervention, we can avoid the open-endedness that a reliance on customary development would imply. Codification could also have a positive effect on the legitimacy of

³⁹ Supra note 100

⁴⁰ A. Buchanan, 'Reforming the international law of humanitarian intervention' in J.L. Holzgrefe and R.O. Keohane (eds.), *Humanitarian Intervention, Ethical, legal and political dilemmas* (Cambridge, Cambridge University Press, 2003) p. 134

⁴¹ Supra note 104 p. 135

⁴² Supra note 104 p. 135

⁴³ J. Stromseth, 'Rethinking Humanitarian Intervention' in J.L. Holzgrefe and R.O. Keohane (eds.), *Humanitarian Intervention, Ethical, legal and political dilemmas* (Cambridge, Cambridge University Press, 2003) p. 245.

international law.⁴⁴ The main problem with any a priori codification is that given the complexity and diversity of the situations in which humanitarian intervention may be required, it would be very difficult to specify a doctrine in advance, isolated from actual practice.⁴⁵

The principle of humanitarian intervention has been co-opted as a Trojan horse for US imperialism. In both Iraq and Afghanistan, humanitarian rationales have been evoked to justify what are clearly being fought for US, rather than humanitarian interests. As Richard Falk states "After September 11, the American approach to humanitarian intervention morphed into post hoc rationalizations for uses of force otherwise difficult to reconcile with international law. There is no doubt that the Iraqi people have been liberated, although for what remains obscure."

Lastly, it is sometimes better to let a conflict run its course, than to prematurely step in and stop it. As political scientist Luttwak⁴⁶ has noted "Although war is a great evil, it does have a great virtue: it can resolve political conflicts and lead to peace." Humanitarian interventions often impose short term solutions to trump real long term peace and stability.

Chapter Overview

The Chapter has ably discussed debates for and against humanitarian intervention by various scholars. What is essential, however, is that the international society manages to reconcile its practice with the duty it has under natural law to preserve the basic values of a common humanity, even when this includes breaching the sovereignty principle. Regardless of

⁴⁴ Supra note 107 p. 245, 256

⁴⁵ Supra note 107 p. 256

⁴⁶ E. N, Luttwak ' Give War A Chance' *American Foreign Affairs Journal*, Vol. 78 Issue. 4 (1999) pp. 36-44

which approach we chose, living up to such a commitment requires a significant change in the way of thinking, both among states-people and ordinary citizens. If this does not happen, any effort to fulfill the responsibilities that we owe to others is likely to fail.⁴⁷

Finally, and perhaps most importantly as seen in the debates against humanitarian intervention, interventions often do more harm than good. In, fact, they often result in precisely what proponents say they are meant to prevent - gross violations of human rights and international law. Militaries, no matter what their mission, will fight to win. The process of winning a war, will often make the humanitarian situation worse in the short term. In what way is this act "humanitarian"? In Kosovo, a reliance on airpower, while ultimately successful in achieving a military victory, provoked the Serbs to accelerate their murder and displacement of Albanian Kosovars.⁴⁸

The case for humanitarian intervention in Darfur is clear. First, the conflict threatens regional stability. When humanitarian crises are left unsolved, they ultimately spread to neighbouring countries, destabilizing a region, leading to further conflict in neighbouring states, and threatening even more people. Second, the international community has a moral obligation to protect the hundreds of thousands who are at risk in Darfur. Third, the Sudanese government, through its complicity in the genocide, has clearly forfeited its right to sovereignty. Finally, we have a responsibility to right the wrongs of the western colonial legacy in Africa.

⁴⁷ E. Ryen, *The Responsibility of Humanitarian Intervention* (Masters Dissertation, University of Wales, Aberystwyth, 2004) pp. 42-43

⁴⁸ http://www.munkdehates.com/debates/humanitarian_intervention/for.cfm visited on 29th September 2009 last updated in January 2010

The debate over humanitarian intervention should not be whether it is necessary – there is no question that it is – but rather who is going to finally act to stop the unnecessary killing. It is more intervention that is needed, not less.

CHAPTER 3

Darfur as a Case Study of Humanitarian Intervention.

INTRODUCTION

This chapter will discuss humanitarian intervention in the context of Darfur. It is structured as follows; A discussion on the norm of responsibility to protect emphasizing the need for intervention in situations like Darfur, the role of the GOS in the protection of the civilians in Darfur, a general overview of the Sudan has been provided just to help in better understanding the scenario in Darfur, state sovereignty and the concept of non intervention are discussed in relation to Darfur and how the GOS has continued to use this as an excuse for non intervention in its “internal affairs,” the criteria for military intervention as espoused in the ICISS is also discussed, vital interests of China¹ in Sudan has been discussed as the major impediment for intervention by UN and finally, the chapter discusses the attempts to peace process in Darfur.

The crisis in Darfur has been the impetus for numerous case studies in the debate on the creation of an international customary norm based on the Responsibility to protect as core principle of transforming sovereignty from a right to responsibility. It has also been at the centre of the academic and policy communities’ debate on the relevance of the protection of civilian populations in UN mandated multilateral humanitarian intervention.²

¹ Refer to Chapter 1 pp 18-19 on a detailed discussion on China’s interests in Darfur.

² Interview conducted on 9th September 2010 with Florence Oduor a Training Coordinator/Facilitator at International Peace Support Training Centre, Karen, Nairobi

Through all the diplomatic maneuvering to protect the civilians in Southern Sudan, President Bashir remained uncooperative, indifferent, and in some cases a willing participant in the acts of Genocide against his own people. Therefore the international community had a predicament in protecting the civilians while at the same time respecting the notion of sovereignty in regards to Sudan. In discussing how the war began and how the Sudan government organized the janjaweed to kill civilians³, there was clear cut evidence that President Bashir was responsible for war crimes and the world community had to readily respond. "That the human rights violations in Darfur meet the legal threshold of genocide, war crimes and crimes against humanity and, therefore, justifies forcible humanitarian intervention by any grouping of states whether in or outside the context of the UN or the AU. While intervention may be legitimate outside the UN or AU framework, it would be in the interest of the stability of the global and regional peace and security system painstakingly assembled over the last six decades that preference be given to forcible intervention within the institutional framework of the UN and AU. In order to demonstrate that forcible humanitarian intervention remains a serious policy option, the other possible options of intervention are not appropriate in the particular circumstances of Darfur."⁴

The relevance of the Responsibility to Protect framework arises from the fact that interventions for the protection of civilians are likely to continue to occur in the foreseeable future, especially in Africa. This is so because instances of gross violations of human rights

³ Refer to Chapter 1 Literature on Darfur for a detailed discussion of the activities of the Janjaweed who are government supported militias

⁴ K. Kindiki, 'Intervention to Protect Civilians in Darfur: Real Dilemmas and Policy Imperatives'. The Institute Publications Monograph 2007 p.131

continue to occur, especially in the context of internal armed conflicts.⁵ One of the likely consequences of such humanitarian interventions is that the future of the post-Cold War legal order will entail a further 'softening' of the view of the traditional positivist and absolute view regarding the use of force under the UN Charter. The UN's increasing involvement in peacekeeping missions worldwide bares testimony to this. Given that interventions are likely to continue occurring, guidelines aimed at limiting the potential abuse of the noble ideals of undertaking the responsibility to protect need to be developed.⁶

An overview of Sudan

A brief overview of the political, religious and ethnic features in Sudan, with a focus on the unequal regional and ethnic distribution of power, will provide some context for the rebel leaders' engagement of the Sudanese government in conflict. As ably discussed in Chapter 4, there were various causes of the war including drought, land, marginalization etc.⁷ The Republic of the Sudan is located in the Horn of Africa and borders ten countries. Sudan is the largest country in Africa, with a total estimated population of 37 million, and placed 147 of 177 countries on the 2007/2008 United Nations Human Development Index⁸. The capital, Khartoum, is located along the Nile in northern Sudan. The city and its surrounding areas are stable and

⁵ R. Zacklin, *The United Nations Secretariat and The use of Force in a Unipolar World Power*, (Cambridge: Cambridge University Press, 2001) pp. 6-7

⁶ Supra note 114

⁷ Refer to discussion in pp. 56-58 on the possible causes of the Darfur conflict as discussed by various authors

⁸ UNHDI 2008

prosperous. Conversely, the east, south and western regions of Sudan – the peripheries – are, to varying degrees, marginalized from power, economically underdeveloped, and conflict-ridden.⁹

The Current President General Omar al-Bashir and the National Islamic Front came to power in 1989 in a bloodless coup that overthrew a democratically elected government. Bashir reinstated a military dictatorship, banned political opposition parties, increased the country's military capabilities and imposed Islamic law. Strongly backed by Islamic movements in Khartoum and abroad, the government's stated objective was to 'Islamise' the country. However, over the past fifteen years, the dominant discourse in Khartoum has shifted from religious supremacy to ethnic supremacy, focusing now on the superiority of Arab ethnicity (in opposition to 'African' ethnicity), rather than on the creation of an Islamic state and the subjugation of the southern Christians. 'African' Muslims from the east and west have increasingly been targeted by discriminatory policies. While racism is not new to Sudan, the explicit terms of the government's new discourse marks a significant shift.

The current violence afflicting the Darfur states of western Sudan erupted in early 2003 when rebels took up arms and attacked government police and military installations. Within a year, hundreds if not thousands of people had been killed and tens of thousands more had been forced out of their homes.¹⁰ The UN Security Council's response was, during the first 15 months, muted. Since adopting its first resolution concerning the Darfur crisis in June 2004, however, the Council's record of action can be best described as one of uncertain half-measures. The debate

⁹ K. Whitty ., Norman Paterson School of International Affairs, Carleton University, Volume 9 2008, p.19

¹⁰ M Gaouette. and M.MacKinnon "The UN Security Council and the Darfur Crisis: A Case Study of Weak and Ineffective Decision-Making" Paper presented at the annual meeting of the International Studies Association 48th Annual Convention, Hilton Chicago, CHICAGO, IL, USA, Feb 28, 2007 http://www.allacademic.com/meta/p180867_index.html visited on 28th October 2009, Last updated in July 2010

against humanitarian intervention explains why the UN has not been able to act decisively as states like China and Russia have always vetoed a motion to place sanctions on Sudan.¹¹

The Darfur conflict has changed radically in the past year and a half. While there are fewer deaths than during the high period of fighting in 2003-2004, the conflict has mutated, the parties have splintered, and the confrontations have multiplied. Violence again increased in 2008 while access for humanitarian agencies became more difficult. International peacekeeping is not yet effective and a political settlement remains far off.¹²

The concept of humanitarian intervention is at its core about protecting people. It rests on the premise that when gross abuses of human rights are taking place, when innocent people are being maimed and killed, then the international community cannot and should not stand idly by. What precisely should be done and by whom is a topic of great importance and debate. But that something should be done to stop such abuses is unquestionable. As Kofi Annan (immediate former secretary general of the UN) has stated unequivocally "massive and systematic violations of human rights, wherever they take place, should never be allowed to stand."

In examining any conflict, it is important to study the roots causes of the conflict. This is important as it assists in coming up with ways in which the root cause can be dealt with and in effect the conflict is managed permanently thus bringing lasting peace. Zartman¹³ rightly argues

¹¹ Refer to discussion in Chapter 2 on why the UN has not been able to act on the Darfur situation despite there being evidence of gross violation of human rights.

¹² <http://www.crisisgroup.org/home/index.cfm?id=3060&l=1&gclid=CL3B1LOw350CFZoU4wod3i1TNQ> visited on 28/10/09, Last updated in August 2010

¹³ W. Zartman: Mediation in Ethnic Conflicts: Centre For Development Research (ZEF Bonn): Facing Ethnic Conflicts (14th- 16th December 2000) www.Zef.de/download/ethnic_conflict.pdf

that to understand violent conflicts it is very important to first conceptualize their causal ingredients as a search to a guide to a search for solutions to the conflict(s). He identifies denial of basic needs as an ingredient for a conflict.

Prunier¹⁴ gives an overview of the Sudan and more specifically the Darfur to enable the non specialist reader grasp the context in which the crisis developed. The history of Darfur provided in this book is important because it provides readers with a historical background of the country thus making it easy to explain events leading to the conflict.

The underlying cause of the present disaster in Darfur can also be said to be the failure of traditional systems for the allocation of land and water resources and the mediation of conflict. This failure is compounded by a combination of drastic ecological changes and cynical human manipulation. As the ability of local communities to cope with drought and famine declined over time and the capacity of their traditional systems of conflict mediation over rapidly diminishing, resources became overwhelmed, and opportunistic politicians took advantage of the situation.¹⁵

It is difficult to separate or rank these underlying and aggravating "causes," as they tend to interact with and reinforce each other, sometimes linking to broader or very local factors.

De Waal and Flint¹⁶ also provides a historical background of the Sudan and its people together with history in a bid to explain the probable causes of the war.¹⁷

¹⁴ G. Prunier, *Darfur: The Ambiguous Genocide*, (Newyork: Cornell University Press, 2005) pp.1-4 Refer to discussion in Chapter 1 on the literature on Darfur

¹⁵ The San Diego Union Tribune, Causes and Solutions for Darfur, By Abdullahi Ahmed An-Naim August 15, 2004 (An-Naim is a professor of law at Emory University. He is a native of Sudan)

¹⁶ A. De Waal and J. Flint, *Darfur: A New History of a Long War (African Arguments)* London Zed Books Limited 2008 p. 1-16

Columbia Professor, Mamdani¹⁸ accuses the Save Darfur Coalition of exacerbating the situation in Darfur, focusing inaccurately on race and violence, rather than the systemic causes of the conflict. Mamdani smears anyone who has supported humanitarian intervention in Darfur by implying that they are supporters of US military interventionism and adventurism. He actually blames the US for the problems in Rwanda. For him there are a lot of similarities between Iraq and Darfur.¹⁹ In my view his critique is extreme and though may contain some truth may be looked at as personal rather than an objective scholarly contribution to the subject of the urgent need for humanitarian intervention in Darfur.

Harvard professor, Alex de Waal has also been critical of the activist campaigns, claiming that activists have ignored the root causes of the conflict and are out of touch with the changes that have occurred in Darfur.

State sovereignty versus humanitarian intervention- case of Darfur region

International law experienced a "realist" moment during the military intervention in Kosovo. NATO intervened outside the United Nations structure and without an imminent threat to state survival. The sole reason was to save lives although NATO member states varied on formal justification for intervention. During the same time, the United Nations mission to Rwanda failed to prevent genocide. In 2001 a legal framework, recognizing the evolution of international law in humanitarian intervention created the process and requirements for states to

¹⁷ Refer to discussion in Chapter 1 p. 19 footnote 49

¹⁸ M. Mamdani, *Saviors and Survivors: Darfur, Politics and the War on Terror* (The Doubleday Religious Publishing Group, 2007) p. 20

¹⁹ M. Mamdani, *The Politics of Naming Genocide, Civil War, Insurgency*, London Review of Books Vol 29 No. 5 8th March 2007 p. 5-8

intervene to save lives. In 2003, Arab militias with Sudanese planes engaged in acts of genocide in Darfur. In 2008, over two million displaced civilians remain in camps on or near the Chad border and the Arab militias continue to kill civilians with impunity. The new legal framework has not prevented the suffering in Darfur. The law alone will not prevent humanitarian suffering. The state is the primary actor in the international realm. The debate often frames state sovereignty as the hurdle to humanitarian intervention.²⁰

The doctrine of state sovereignty²¹ has a pedigree that goes back more than 350 years. At its birth, it was a recipe for peace, the crucial articulation of a principle that would allow the catastrophic religious wars of Europe to come to an end. In the Treaties of Westphalia (1648), European princes agreed that each ruler would determine the law - including, most importantly at that time, the establishment of religion - within his or her own domain and that no other power could legitimately interfere with the chosen internal order. In an ironic turnabout, this formula for ending the devastation of the Thirty Years' War came to be used centuries later, as a shield permitting such devastation to continue as long as it remained 'hidden' *within* national borders.²²

In the 20th century, the United Nations Charter canonized state's primacy in the United Nations Charter Article 2.1, "The Organization is based on the principle of the sovereign equality of all its Members."²³ Historically, the international principle of non-intervention attached to make state sovereignty Inviolable. "This view essentially treats sovereignty and nonintervention

²⁰ Interview conducted on 11th September 2010 with Dr. Kithure Kindiki a Lecturer at the University of Nairobi

²¹ Refer to Chapter 2 and 4 for a detailed discussion on the concept of state sovereignty and humanitarian intervention

²² K. Newland, P. Erin and M. Zard, *No Refuge: The Challenge of Internal Displacement* (New York and Geneva: United Nations, 2003), p. 35.

²³ Charter of the United Nations and Statute of the International Court of Justice (New York: United Nations ; 1945),6.

as forming 'two sides of the same coin,' thus relegating intervention as its "conceptual opposite."²⁴

The principle of non-intervention is well found in the UN Charter and applies to states and the UN itself, Articles 2.4 and 2.7 respectively. "All members shall refrain in 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. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state."²⁵ In order for humanitarian intervention to occur over the objection of the state, the primacy of the state in the international realm must necessarily degrade.

As the principles of state sovereignty and non-intervention are contained in the UN Charter so is "promoting and encouraging respect for human rights."²⁶ The UN embraces the contradiction "In its dual commitment to international peace and fundamental human rights, the UN Charter appears to reflect a contradictory commitment to the exclusive sovereignty of the state and international protection of human rights"²⁷ The growth of human rights law within the framework of the UN Charter and treaty law in the Post Cold War era increased the debate. The legal foundations of human rights law rest within the Charter itself and such treaties on treatment of civilians in combat, genocide, and torture. "Indeed the evolution of human rights law and

²⁴ V. Tin-bor Hui, *Problematizing Sovereignty in International Intervention in the Post-Cold War World: Moral Responsibility and Power Politics*, M. C Davis (ed) (Armonk: M.E. Sharpe, Inc., 2004), p. 85.

²⁵ Charter of the United Nations and Statute of the International Court of Justice, 6.

²⁶ Charter of the United Nations and Statute of the International Court of Justice, 5.

²⁷ M.C. Davis (ed) *The Emerging World Order: State Sovereignty and Humanitarian Intervention in the Post Cold War World: Moral Responsibility and Power Politics*, (Armonk: M.E. Sharpe, Inc. 2004), p. 9.

thinking over the last 40 years has been marked by the development and acceptance of universal standards of human rights; even if procedures to hold governments accountable for such violations have not yet been accepted. As early as 1948, the Genocide Convention showed that the international community recognized that the international community had a responsibility to act to prevent genocide.²⁸ At the same time as the expansion of human rights in international law, intervention by states and the members acting within UN structure increased. "A more activist Security Council in the post-Cold War period defined a number of complex emergencies as threats to international peace and security under Chapter VII, Article 39 of the UN Charter. It thereby gave legal cover to the insertion of humanitarian assistance even without the consent of the government authority of the state in question, and therefore made internally displaced people accessible to international humanitarian relief efforts."

Significantly, ICISS shifts the debate from pitting sovereignty against humanitarian intervention to the "Responsibility to Protect". "The traditional language of the sovereignty-intervention debate - in terms of 'the right of humanitarian intervention' or the 'right to intervene' - is unhelpful. The Commission is of the view that the debate about intervention for human protection purposes should focus not on 'the right to intervene' but on the 'responsibility to protect.'²⁹ The Commission averts the juxtaposition in the creation of two basic principles. "State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. Where a population is suffering serious "harm", as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt

²⁸ C. Ero and S. Long, *Intervention: A New Role for the United Nations?* "In some Corner of a Foreign Field: Intervention and World Order", R. Williamson (ed) (New York: St. Martin's Press, Inc., 1998), p. 128.

²⁹ ICISS, 16 -17.

or avert it, the principle of non-intervention yields to the international responsibility to protect.³⁰ Legal scholars that claim the ICISS framework is not fully accepted still recognize that the law now authorizes military intervention for humanitarian assistance in cases like Darfur even if it means working outside the United Nations. "It may be premature to claim that a new legal norm in support of humanitarian intervention in exceptional cases has emerged in any -clear or uncontested way, but elements of a normative consensus may be developing gradually. In a situation like Rwanda – or Darfur, Sudan a collective humanitarian intervention by a regional organization or group of states may well enjoy wide legitimacy in the absence of effective action by the Security Council."³¹ Assuming the ICISS framework is the new consensus it provides an Internationally recognized framework to study the humanitarian crisis in Darfur.

The Darfur crisis therefore reflects the paradox of the post-colonial state in Africa, asserting the prerogatives of sovereignty, without really being sovereign "on the ground," and without fulfilling its responsibilities to its citizens. While immediate and effective action must be taken to relieve the suffering of civilian populations, longer term strategies must also confront this paradox by consistently holding African governments accountable for their sovereign responsibilities even in times of relative peace.³²

³⁰ ICISS, 8.

³¹ J.S Wippman, and R. Brooks, *Can Might Make Rights? Building the Rule Long After-military interventions* (New York, Cambridge University Press, 2006), p. 38-39

³² The San Diego Union Tribune, Causes and Solutions for Darfur, By A. Abdullahi An-Naim August 15, 2004 (An-Naim is a professor of law at Emory University. He is a native of Sudan)

The ICISS framework under the Responsibility to Protect provides six criteria for military intervention for humanitarian reasons. "While there is no universally accepted single list, in the Commission's judgement all the relevant decision making criteria can be succinctly summarized under the following six headings: *right authority, just cause, right intention, last resort, proportional means and reasonable prospects.*"³³

This chapter analyzes the case study of the humanitarian crisis in Darfur, Sudan using the six criteria.

The first will be the threshold criteria of Just Cause followed by Right Intention, Last Resort, Proportional Means and Reasonable Prospects labeled by ICISS as the "Precautionary Principles". The ICISS framers borrowed substantially from Just War theory to create safeguards against states masking unlawful aggression as humanitarian intervention. "There are four other substantial conditions that have to be met at the outset: right intention, last resort, proportional means, and reasonable prospects. When both these and the threshold 'just cause' principle are taken together, to jointly shape the policy decisions of both the Security Council and member states, the Commission believes that they will strictly limit the use of coercive military force for human protection purposes."³⁴ Each of the four conditions seeks to restrain unlawful aggression as an ulterior motive. As legal realists, the first precautionary principle understands states might have interests other than fighting human suffering. To that end, the framework recommends multilateral operations, with specific guidance from states within the region. Finally, the element of Right Authority, "who can authorize a military intervention. Unfortunately, the law has

³³ICISS;32

³⁴ICISS, 35.

evolved faster than international reality. The UN and the member states are failing to protect the victims in Darfur, Sudan. Where the law allows for humanitarian intervention over sovereignty, states still will only

intervene when vital interests are at stake or conditions within the state allow for use of force knowing vital interests are not at stake.

"In the Commission's view, military intervention for human protection purposes is justified in two broad sets of circumstances, namely in order to halt or avert: large scale loss of life; actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale "ethnic cleansing, " actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape. If either or both of these conditions are satisfied, it is our view that the "just cause" component of the decision to intervene is amply satisfied"³⁵ There is no consensus for Darfur on the death toll numbers and the intent behind the killings/characterization of deaths. The number of victims is definitely not a key factor in deciding if large-scale killings constitute genocide or not. However, numbers are relevant in themselves (the magnitude of what the targeted group has suffered) and secondly because of real or potential impact on world opinion.³⁶ The difficulty with numbers is determining the criteria: when to start counting, who gets counted, and who is counting. The United States and the UN disagree on the intent behind the deaths. The disagreement is over the labels: genocide, ethnic cleansing, or crimes against humanity. "As for the most prominent user of the word 'genocide' in connection with Darfur, the former US Secretary of State Colin Powell seems to have based himself on the December 1948 definition of

³⁵ ICISS, 32.

³⁶ G. Prunier, *Darfur: The Ambiguous Genocide* (Ithaca: Cornell University Press, 2007), p. 148.

the world when he said on "9 September 2004 that in his opinion Darfur was a genocide.³⁷ The UN's "report apparently wrote that there was 'not sufficient evidence to indicate that Khartoum had a state policy intended to exterminate a particular racial or ethnic group', a definition that moved away from December 1948, but which in itself is acceptable.³⁸ Where there is no consensus on the characterization, there is characterization on just cause for intervention. Former Deputy Secretary of State Robert B. Zoellick answered questions on the outcome of two desperate characterizations in Darfur before Senate Hearing on 28 September 2005 "To be fair to the U.N., finding on January 25 was that this was no less serious and heinous than genocide. What this deals with is a different view in terms of the Genocide Convention of 1947 and 1948. So again, crimes against humanity, which they found, is what was used in Nuremberg trials. We all-agree what happened was outrageous, heinous. We believe it is genocide. They believe it is crimes against humanity. We have to stop it. We have to get it turned around and fixed.³⁹

"Right intention: The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned.⁴⁰ In Darfur, the first governmental organization response was from the regional organization, African Union, with the consent of the government of Sudan. Currently, the UNSC passed Resolution 1769 unanimously on 31 July 2007,"It determined that the situation in Darfur

³⁷ Supra note 145 p 157.

³⁸ Supra note 145 p. 157 - 158

³⁹ Hearing before the Committee on Foreign Relations, United States Senate, One Hundred Ninth Congress, First Session, September 28, 2005,- *Darfur Revisited: 171e International Response* (Washington, D.C. U.S. Government Printing Office, 2007), 26.

⁴⁰ ICISS, XII., Refer to discussion on debates supporting humanitarian intervention in chapter 2

Constitutes a threat to peace, and authorized the deployment of a United Nations-African Union Mission in Darfur (UNAMID) under Chapter VII of the U.N. Charter.⁴¹ Ironically, if member states had interests other than saving lives, they would be more willing to intervene.

Alternatively, as in the case of Darfur, China's interest in preventing intervention to keep the oil flowing and retaining the status quo for the Sudanese Government. "China purchases two-thirds of Sudan's oil exports and sells weapons to the Sudanese government."⁴²

Although not intended, the precautionary principle of last resort is ineffective against the speed of war and is therefore at odds with the main intent of the ICISS framework, prevention, before humanitarian disasters occur. In 2003, the international focus in Sudan was on the civil war between the north and the south, not the western area of Darfur. The international community was slow to recognize Sudan's "counterinsurgency" techniques against the tribes of Darfur. The world realized the scope and breadth of the atrocities only after the majority of the mass killings and civilian displacement were complete. The international goal of prevention necessarily focused on the current humanitarian need: safeguard the remaining civilians, return the displaced civilians to homes, disarm the militias, and hold war criminals accountable. "Last resort: Military intervention can only be justified when every non-military option for prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded".⁴³ Five years have passed since United States declared the atrocities of Darfur genocide. Full deployment of the joint UNAMID force did not

⁴¹ United Nations Security Council Resolution; 1769 (2007).

⁴² F. Maureen , "China Reacts Defensively to Spielberg Resignation, Director Left Olympics Role Over Darfur," *Washington Post*, 14 February 2008, sec A .

⁴³ ICISS, XII

occur until mid 2008. Former President of the US Bush spoke on Darfur after reports on "military and militia attacks on Darfur in [late January 2008] that killed at least 150 people and displaced more than 12,000, and burned towns to the ground.

The ICISS framers define "Proportional means as; the scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.⁴⁴ For Darfur intervention, reality shapes proportional means more than the minimum necessary to achieve humanitarian objectives. Member state interest drives willingness to contribute financially, expert training, troops, equipment, or transportation not the reality of scale, duration, and intensity of the military intervention. The wealthier member states are more willing to give money than troops and equipment."It is estimated that UNAMID will cost roughly \$2.5 billion a year, in addition to start up costs. U.N.member states will fund the mission through the U.N. assessment scale. The United States will contribute 27.1% of the total costs.⁴⁵

In adding reasonable prospects as to the precautionary principles, specific objectives must be outlined and be achievable. "Reasonable prospects: There must be a reasonable chance of success in averting or halting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.⁴⁶

The ICISS framework rests firmly on the UN Charter. "There is no better or more appropriate body than the United Nations Security Council to authorize military intervention for

⁴⁴ ICISS, XII

⁴⁵ Save Darfur, *Darfur Update*. October 2007 pp.67-69.

⁴⁶ ICISS, XII.

human protection purposes.⁴⁷ Only two articles in the UN Charter expressly authorize the use of force over state sovereignty, Articles 42 and 51. Article 51 preserves the right of the state to use force in self-defense against an armed attack. The security of a state is a vital interest, where threatened, the use of force is permitted.⁴⁸ The ICISS framers shape the "analysis for intervention from security interests to purely humanitarian grounds for intervention. "This [Article 51] is unlikely to have application to the military intervention situations with which this work is concerned. Under Article 42 of the UN Charter, the UNSC is authorized to use military force, "it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."⁴⁹

Currently, the UN provides legitimacy to uses of force by its members. The UN is beholden to members' willingness to contribute forces to UN missions. The authority of the UN is underpinned not by coercive power, but by its role as the applicator of legitimacy. The concept of legitimacy acts as the connecting link between the exercise of authority and the recourse to power. Attempts to enforce authority can only be made by legitimate agents of that authority. Collective intervention blessed by the UN is regarded as legitimate because it is duly authorized by a representative international body; unilateral intervention is seen as illegitimate because self-interested.⁵⁰

⁴⁷ ICISS, XII.

⁴⁸ See discussion on when sovereignty of a state can be overlooked to protect suffering citizens, chapter 3

⁴⁹ Charter of the United Nations and Statute of the International Court of Justice (New York: United Nations, 1945), 28.

⁵⁰ ICISS, 48

In the event of humanitarian crisis may reach the level of the Just Cause threshold, the next step within the ICISS framework is receiving authorization for military intervention. "Security Council authorization should in all cases be sought prior to any military intervention action being carried out. Those calling for an intervention should formally request such authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter.

In 2003, the Government of Sudan was engaged in international and regionally lead peace talks for the North-South conflict. Darfur rebels seized the opportunity to join the international stakes for a share of the wealth and independence by stepping up attacks on police stations and , ' government posts. The coordinated attacks by the two movements revealed the inadequacy of the government militarily, hence the decision to rely primarily on the Janjaweed, reinforced by helicopter gunships and bombers from the national air force. In Khartoum's calculation, the stakes in Darfur were higher not just because of the high number of soldiers serving in the national army from the region, but also because of the potential implications of the rebellion for the stability of the central government.⁵¹

In 2004, with slow realization of the atrocities and pressure from NGOs, the UN began to act. The atrocities in Darfur competed with other state interests. The UNSC first action was to monitor only. Joint Implementation Mechanism (JIM) to monitor events in Darfur, but the major powers in the Security Council resisted demands for a robust military action to protect civilians and guarantee the unimpeded supply of humanitarian relief. Needing government cooperation to

⁵¹ Iyob R. and Khadiagala G.M, *Sudan: The Elusive Quest for Peace* (Boulder: Lynne Rienner Publishers, Inc., 2006), p. 151.

reach an agreement in Naivasha [Kenya], Western countries were reluctant to push for more forceful measures that they did not have the political will to muster. With armed forces ensnared in Afghanistan and Iraq, the United States and Great Britain were reluctant to be perceived as threatening to invade another Muslim country.

The reality of low state interest further fractioned by state resources directed to other state interests slows the intervention in Darfur. A non-UNSC member state (a nonvoting member dependent on current rotation cycle) with a vital interest in Darfur could only pressure the UNSC faster and larger humanitarian intervention. The states with the most vital interest, the bordering states, have the least capability to prevent the genocide and the least power within the UN. The ICISS framework provides alternatives if the UNSC rejects a proposal or fails to act in a reasonable time. Consideration of the matter by the General Assembly in Emergency Special Session under the 'Uniting for Peace' procedure; and action within area of jurisdiction by regional or sub-regional organizations under Chapter 'VIII of the Charter, subject to seeking subsequent authorization from the Security Council.⁵²

Further, the ICISS framers understanding the damage to UN credibility allow concerned states to intervene. A military intervention is undertaken by an ad hoc coalition or individual state which does fully observe and respect all the criteria we have identified, and if that intervention is carried through successfully - and is seen by world public opinion to have been carried through successfully - then this may have enduringly serious consequences for the stature and 'credibility of the UN itself. Without vital state interests in, Darfur, most UN member states are content remaining within the slow moving UN/AU hybrid solution.

⁵² ICISS, XIII.

The ICISS framework also contemplates the veto power of the Permanent Members of the UNSC. The Commissioners suggest the creation of a "code of conduct" where a Permanent Member would abstain their veto for the greater good of humanitarian intervention. Importantly, the framework acknowledges this would never occur over state interest. The Permanent Five members of the Security Council should agree not apply veto power, in matters where vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.⁵³ Although not formally accepted, the United States followed this policy in an attempt to hold war criminals accountable for actions in Darfur. Darfur resurfaced in the international conscience in early March 2005 in the context of deep divisions between the United States and its Western allies over a proposal for the International Criminal Court (ICC) to probe alleged war crimes in Darfur. The UN Commission on Darfur 'strongly' recommended referring the proposal to the ICC in The Hague, which is mandated to try cases involving war crimes and genocide, but the United States, which has remained opposed to the. Creation of the ICC, instead proposed a separate UN war crimes tribunal in Tanzania to handle the crimes in Darfur. In a compromise, the United States abstained from a Security Council resolution that referred fifty-one names to the ICC for formal investigation of allegations of atrocities against unarmed civilians in Darfur. Unfortunately, the Government of Sudan continues not to cooperate with the ICC's Investigation or requirement to turnover alleged war criminals. The ICC's efforts are failing to, deter further Arab militia attacks against civilians. The Government of Sudan is unwilling to be cooperative by failing to hand over alleged violators and are directly flouting the court of world opinion by promoting the worst offenders.

⁵³ ICISS, XIII

Vital interests in Darfur

The state with the most significant vital interest in Darfur is China. China has significant power as one of the five Permanent Members of the UNSC. China's vital interest is the continued relationship with the Government of Sudan to maintain oil export, agreements⁵⁴. Both the Sudanese and Chinese governments are wary of interdependence. "Sudanese officials are also trying to deflect criticism of government's relationship with China, which buys two-thirds of Sudan's oil exports, sells it weapons and invests in its economy, and provides political cover for Khartoum in the U.N. Security Council."⁵⁵ The largest concern is that China is a UNSC Permanent member with a vital interest in preventing the humanitarian intervention to stop the attacks on the civilians and return the displace civilians to homes in order to keep the current Government in power to maintain the flow of oil. China is responding to the international pressure that has increased with the 2008 Olympics in Beijing. China's diplomatic efforts are in favor of the current UN/AU hybrid intervention. So far, China is the only non-African country with peacekeeping forces on the ground in Darfur.

Brief Description of Peace Processes in Darfur

The only peace agreement that is comprehensive in its coverage of the issues is the Darfur Peace Agreement (DPA) of May 2006. However, earlier preparatory agreements, which aimed at establishing a ceasefire, are important in setting a precedent for the compliance of parties, the absence of monitoring mechanisms, and the reliance upon the government to support

⁵⁴ Refer to Chapter 1 pp 18-19 on a detailed discussion on China's interests in Darfur.

⁵⁵ Interview conducted on 9th September 2010 with Florence Oduor a Training Coordinator/Facilitator at International Peace Support Training Centre, Karen, Nairobi

security arrangements. Recent efforts to revive the talks are also important in understanding the changing dynamics of the conflict and underlining the need for a more inclusive, well-resourced, and strongly-supported peace process.

Among the earlier attempts towards peace, the Humanitarian Ceasefire Agreement in N'djamena in April 2004 between the government of Sudan (GoS), the SLA, and the JEM was important in establishing a ceasefire and setting up mechanisms to oversee the cessation of hostilities, primarily to facilitate the provision of humanitarian aid to displaced civilians. A Ceasefire Commission (CFC) was formed to facilitate coordination between the fighting parties and investigate any violations of the ceasefire. The CFC, based in Darfur, was composed of Chad as the mediator of the agreement; GoS, SLA, and JEM as conflict-parties; and the US, EU and the UN as observers. The CFC was to supply data to the Joint Commission (JC), which was based in N'djamena and included all the parties in the CFC. The CFC was intended to collect information on violations and make reports to the JC, for use by the negotiating team at Abuja that was already preparing bases for talks. The CFC, however, ultimately lacked the capacity to monitor the ceasefire and the JC was not provided with sanctioning powers against violators.⁵⁶ Thus, the ceasefire was soon being flouted by all parties. The African Union Mission in Sudan (AMIS), formed in July 2004 as an observer unit to monitor the ceasefire, was also ineffective, failing largely as a result of a lack of manpower and equipment, but also hindered by a mandate that prevented it from engaging armed groups who violated the ceasefire.⁵⁷ One constant

⁵⁶ United States Institute of Peace. "Humanitarian Ceasefire Agreement on the Conflict in Darfur," (April 2004).

⁵⁷ International Crisis Group. "To Save Darfur." Africa Report (105), (17 March, 2006), pp.17-18.

attribute of the Darfur conflict/peace processes is the continuous violation of ceasefires signed by the GoS and its opponents.

A number of factors combined to thwart the peace processes and the DPA, including internal factors, such as the lack of commitment by the GoS, the divisions within the resistance movements, and the complexity of Sudan itself (characterized by many armed and political groups with claims to political power and resources). The handling of the peace processes — especially by the resistance movements — has also been blamed for resulting in an exclusive and incomprehensive peace agreement. Finally, regional and international players have also failed to back the peace processes and agreements meaningfully (and perhaps forcefully, as well)⁵⁸.

In its rush for a peace agreement, the AU was first blamed for entertaining separate bilateral talks between the regime and the factions, thereby weakening the factions and preventing them from uniting and using their combined leverage. The AU mediation team was also accused of rushing to a deadline for a final peace document, without responding to the reservations of the SLA/AW faction on security, power sharing, and the compensation fund. While closing the document to further discussions, the AU kept extending the deadline for signing the DPA, from its original target of May 2006 until July of that year. The AU also allowed breakaways from the factions who refused to sign to independently commit to the DPA by creating "the declaration of support of the DPA" document, while rejecting a request by the

⁵⁸ Interview conducted on 9th September 2010 with Florence Oduor a Training Coordinator/Facilitator at International Peace Support Training Centre, Karen, Nairobi

SLA/AW faction to attach a supplementary text to the DPA accommodating its demands without necessarily changing the agreement.⁵⁹

The AU mediation team also failed to include representatives of the wider Darfur community, not reflected in the document. Widespread protests of Darfurians inside Khartoum — as well as in many IDP camps and refugee camps — against the DPA demonstrated the popular feeling of exclusion from the peace agreement⁶⁰ These protests have hardened the opposition of the SLA/AW and JEM to the DPA.

The AU mediation team is also seen as having rushed through the central issues of the conflict. Land and resource disputes, inter-communal reconciliation, the return of refugees and IDPs to their villages, and subsequent potential conflicts over settlements were all lumped under the authority of Darfur-Darfur Dialogue and Consultation. Civil society representatives should have been consulted, for instance, on how to deal with resource disputes — through legal allocation within an agreement or reviving dismantled local structures in a post-agreement context.⁶¹

Regional actors are Sudan's neighbors: Chad, Egypt, Eritrea, and Libya, who played dual roles of sustaining the conflict as well as facilitating the peace process, depending on what has best served their perceived national interests of the moment.⁶²

⁵⁹ A. De Waal. "Explaining the Darfur Peace Agreement," (July 2006). Friends Committee On National Legislation pp 67-72

⁶⁰ International Crisis Group. "Policy Briefing: Darfur's Fragile Peace Agreement," *Africa Briefing* (39), (20 June, 2006).

⁶¹ "Rebels Say Inter Darfur Dialogue Only Valid After Peace," *Sudan Tribune* (18 February 2008). Available online at: <http://www.sudantribune.com/spip.php?article26017>

⁶² International Crisis Group. "Darfur's New Security Reality," *Africa Report* (134), (26 November 2007), pp. 17-18.

The international community failed to back the Darfur peace processes they had other matters that were more urgent in their own countries and thus did not see the Darfur situation as more urgent than their own internal issues.

Stephen Gent, a political scientist, applies the "free rider theory" to explain why even where there is consensus on an issue states fail to act. Ending genocide, Gent argues in a study to be published in the Journal of Politics, is the ultimate good. Everyone opposes genocide, even if they themselves do nothing to halt it. The free rider problem suggests there will be an incentive for each country to sit back and hope someone else expends blood and treasure to stop the killings. When countries have intervened to end political repression, Gent finds, there are usually private benefits attached - the U.S. invasion of Iraq, for example, was not primarily meant to help repressed Iraqis, but to buy America protection against terrorism and a strategic foothold in the Middle East. The theory explains why the smaller countries with less means are intervening in Darfur.

"Small countries do step up to the plate - when the problem is at doorstep, African nations, not Major Powers are the ones now sending in peacekeepers to halt the killings in Darfur."⁶³

In Darfur, the benefit of receiving international goodwill is not reason enough to intervene. The receipt of international goodwill does not outweigh the costs associated with intervention in Darfur. This theory shatters the 20th century theory of international law and state intervention for humanitarian reasons.⁶⁴

The evolution of the legal framework for intervention is not enough. States must have an

⁶³ Interview conducted on 9th September 2010 with Florence Oduor a Coordinator/Facilitator at

International Peace Support Training Centre, Karen, Nairobi

⁶⁴ Interview conducted on 11th September 2010 with Dr. Kithure Kindiki a Lecturer at the University of Nairobi

interest to intervene. The fundamental flaw with the framework is its failure to recognize this current reality. Without state interest, the UN will continually be ineffectual in humanitarian intervention. For the UN to function effectively as a law-enforcing collective security organization, states must renounce the unilateral use of force for national purposes. But the corollary, not always as readily accepted, is that states should be willing to use force on behalf of, as directed by, and for the goals of the UN.⁶⁵

For more than three years, Europe has utterly failed to take any effective steps to pressure the Sudanese regime to stop the systematic war crimes and crimes against humanity being committed by its troops and proxy Janjaweed militias in western Sudan – and during this time millions have been forced from their homes and more than 200,000 have died from the conflict.⁶⁶

Therefore, until, states are willing to use force outside state interest, the framework is just part of the equation for military intervention. The international community must understand the evolution in international law and the vital interest for effective military intervention. The military must understand the vital interest and the repercussions from working within or outside the legal framework.

Chapter Overview

This Chapter has discussed Darfur as a case study of challenges that face humanitarian intervention in Africa. It has come out from the discussion that legal and practical impediments

⁶⁵ ICISS, 49.

⁶⁶ Nick Grono, (vice-president of the International Crisis Group) *European Voice*, 1 March 2007, ⁶⁶
<http://www.crisisgroup.org/home/index.cfm?id=3060&l=1&gclid=C13B1LOw350CFZoU4wod3i1TNO> visited on 28/10/09, last updated in August 2010

should not be used as an excuse not to intervene in Darfur as it has been shown that there is urgent need to intervene in Darfur.⁶⁷

⁶⁷ Refer to Chapter 1 pp.50-51 on why there is urgent need to intervene in Darfur situation

CHAPTER 4

A Critical analysis of humanitarian intervention in Darfur

INTRODUCTION

This chapter will provide a critical analysis of humanitarian intervention in Darfur. The themes of peace research and structuralism will be discussed with a view of analyzing the concept of humanitarian intervention in Darfur.

At the root of every war, at the root of every conflict, and at the root of every issue testing mankind lie major causes.¹ Every issue, every conflict, and every war has underlying causes which are responsible for the spreading of the destruction. In order to stop any major conflict or issue in the world, the causes must be well set out, analyzed and taken away. War has always been at the centre of international relations, and internal war has become by far the most common form of armed conflict.²

The Darfur was and still is one of the most recent internal conflicts that have affected the region and continent heavily. It has resulted in the deaths of thousands and displacement of hundreds of thousands. The long history of internal conflict among various ethnic groups, often characterized as Arab versus non Arab is politically and socially complex but reflects an

¹ Refer to Chapter 3 for a detailed discussion on possible causes of the Darfur conflict

² D.R Steven "Internal War: Causes and Cures" World politics- Vol 49, No. 4, July 1997, pp. 552-556

underlying tension over scarce resources.³ The processes of desertification, drought and population growth have fostered increased competition for scarce water resources, grazing areas and arable land.⁴ Scarcity or competition for resources per se never causes conflict it is mainly the structural inefficiencies that will trigger a conflict. According to Burton,⁵ if individuals potential is suppressed by either elites, other identity groups, institutions and other forms of authority, conflict will inevitably arise. For Burton these groups can sort out their problems through conflict resolution which essentially is termination of a conflict by analytical means thus getting to the root problem and by doing so the parties will get a permanent solution to their problem. For the Darfur conflict to be resolved once and for all it is important that the conflict be analyzed by the interest groups with a view of coming up with lasting peace. The asymmetry of the Darfur conflict has also contributed to the complexity of the conflict. This explains why the conflict has to date not ended.

In conflict analysis, there are certain schools of thought or paradigms which govern how we think about conflict and the nature of human beings and their reaction in a wider setting.

In my view, the peace research paradigm best explains the cause of the Darfur civil war. The peace research paradigm is conceptually associated with structuralist theories of

³ Physicians for Human Rights, *Darfur Assault on Survival: A call for security, Justice and Restitution*, available at http://www.phrusa.org/research/sudan/sudannews_2006-01-11.html. Last updated in July 2010; Also see discussion in Chapter 3 on scarce resources and marginalization of Darfur people as one of the causes of the conflict

⁴ H. Slim, "Dithering Over Darfur? A Preliminary Review of the International Response", *Journal of International Affairs* Vol 80 No. 5 (2004) p. 811-833

⁵ J. Burton, 'Conflict Resolution as a Political System' In V. Volkan . et al (eds) *The Psychodynamics of International Relationships: Unofficial Diplomacy at Work*, (Lexington :M.A Lexington Books, 1991) pp. 82-83

international relations which basically explain relationships by reference to the nature of the underlying structure. Structuralists assume that human behaviour cannot be understood simply by examining individual motivation and intention because, when aggravated human behaviour precipitates structures of which the individual may be unaware.⁶ Galtung⁷ defines violence as the difference between the potential and the actual, between what could have been and what is. Violence is that which increases the distance between the potential and the actual, and which impedes the decrease of this distance. Peace Research challenges the basic tenets of the conventional analysis of violence and offers critical alternatives. The primary motivation of peace research is to improve the human condition and aim for better life in a safer world for all. Peace researchers emphasize the need to promote values like justice, humanity and empathy within society. Mwangiru⁸ like Galtung, also argues that conflict arises when two or more parties have incompatible goals about something. For Mwangiru when attempting to resolve a conflict one must look at the cause and also understand actors and their stake in the conflict to be analyzed. Further, it is important to disentangle the various levels of individual conflicts and to identify their different types of interfaces.⁹ Mwangiru also introduces the notion of conflict systems which acknowledges that every conflict is interconnected with other conflicts in a region. This therefore means that conflict management should not only concentrate on one dimension of the conflict but it should also embrace the conflict system to which the conflict

⁶ A.J.R. Groom, 'Paradigms in conflict: the strategist, the conflict and the peace researcher' in J. Burton and F. Dukes (eds) *Conflict: Readings in management and resolution*., p.80

⁷ J. Galtung, 'Cultural Violence' *Journal of Peace Research* Vol 27 no 3 (1990): pp. 291-305

⁸ M. Mwangiru, *Conflict in Africa: Theory Processes and Institutions of Management*, (Nairobi, Watermark Publications, 2000) p.3

⁹ M. Mwangiru, *The Greater Horn of Africa Conflict System: Conflict Patterns, Strategies and Management Practices*, (Paper prepared for USAID project on conflict Management in the Greater Horn of Africa, 1997)

belongs. The Sudan conflict therefore ought to be looked in the wider sense as a conflict that is affecting the horn of Africa conflict system made up of Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan and Uganda.

Through the former Inter-Governmental Authority on Drought and Desertification (IGADD) efforts to deal with the conflict were directed towards having member states mediate in the conflict. These efforts were carried on by the successor, the Inter-Governmental Authority on Development (IGAD). However, IGAD approaches fall short of a truly systemic perspective. For IGAD only state actors are crucial in the peace process and therefore it has left out non state actors out of the process. This is among the reasons why the conflict has endured for a long time.¹⁰

The peace researcher and Structuralists in general believe that conflicts can only be resolved by structural change and specifically by taking sides in a conflict against the forces of oppression. The peace researcher is therefore seen to be revolutionary and activist. In the Sudan conflict peace can only be found when the oppressive government of Al Bashir is ousted and the perpetrators of the crimes against humanity including the president himself charged accordingly.

¹¹The Marxist tradition of peace research will therefore be useful here. This will send a strong signal to not only the political leaders of the region but the world at large. The re-election of

¹⁰ M. Mwangi M. , *Conflict in Africa: Theory Processes and Institutions of Management*, (Nairobi , Watermark Publications, 2000) p.3

¹¹ Interview conducted on 13th September 2010 with Truphosa Anjichi Humnitrian Officer at OCHA UN Gigiri Complex Nairobi

Bashir, one of the world's most wanted war criminals, is a devastating blow to those who have fought so tirelessly for peace in Darfur.¹²

For Junne and Verkoren¹³ Conflict resolution and peace building efforts can only be fruitful in the long run if they consist of activities involving all other kinds of policy development as well as permeate all development projects and policy issues. Therefore, the primordial task of post conflict is not just rebuilding or reconstruction, because this may lead to rebuilding of the very structures that have given rise to conflicts. What the situation demands is another type of development that addresses these structures and helps to avoid violent conflict

The Government of Sudan has long held the position that whatever violence has occurred in Darfur was initiated by the rebels who, therefore, bear the brunt of the blame for the crisis. Retaliation by the janjaweed is seen as a necessary form of self defense, but does not receive any support from Khartoum.¹⁴ Available evidence refutes the government's position as reports from refugees and displaced persons show a consistent pattern of collision between the janjaweed and the army.¹⁵ Because of the Sudan Government's involvement in the conflict, the other states are under an obligation to offer humanitarian assistance and not allow Sudan to use sovereignty as an excuse for non intervention. In the modern international system, states are not allowed to make unilateral decisions that negatively impact on populations within their territory. This is

¹² <http://www.darfuraustralia.org/darfur/currentsituation> last updated in September 2010

¹³ G. Junne and W. Verkoren , *Post Conflict Development; Meeting New Challenges*, (Colorado: Lynne Rienner Publishers Inc, 2005) p. 6-9

¹⁴ E. Patrick , " Intent to Destroy: The genocidal Impact of Forced Migration in Darfur, Sudan", *Journal of Refugee Studies* Vol 18 No. 4 (2005) pp. 35-42

¹⁵ Supra note

because states are under international law expected to protect their own citizens and in an instance where they fail to do so the international community may choose to intervene to save populations from abuse of human rights.¹⁶ In legal terms, the last word, on certain matters of international security, now rests with the United Nations Security Council; on many aspects of international trade, with the World Trade Organization and its Court. This is just an illustration that at present states cannot be said to be final decision makers as they are guided by rules of international law in aspects of human rights and other sensitive matters. Human rights are matters of international concern breach of which limits state sovereignty and justifies humanitarian intervention. The problem with Sudan is that there is lack of agreed criteria for intervention.

The international community has done little to stop the violence in Darfur. To date no collective military action has been authorized to prevent violence and protect the civilians. By doing this the U.N Security Council has failed to live up to its obligations under international law.¹⁷

The Darfur crisis presents both the UN and AU with a unique opportunity to demonstrate their commitment to humanity and to rebuild confidence in the legitimacy of global governance that broke down after disillusionment in Rwanda and to showcase their seriousness in dealing with human right abuses in Africa which has recently experienced many internal civil conflicts.

¹⁶ G.F Jacobs, *The sovereignty of Law, The European Way*, (New York :Cambridge University Press, 2007) pp. 137-139

¹⁷ Interview conducted on 11th September 2010 with Dr. Kithure Kindiki a Lecturer at the University of Nairobi

For Daniele¹⁸ a truly military humanitarian intervention can take place in a post cold war order dominated by western liberal democracies. He puts forward four proposals; First, Development of guidelines on when military intervention in sovereign states is needed; second, empowerment of a nongovernmental institution such as the world court with the task of deciding when a humanitarian crisis requires external military intervention; third, appointment of a mixed military-civilian committee to establish whether intervention is feasible and how it should be carried out; fourth, creation of a permanent rescue army with soldiers and civilians from a large number of countries to be deployed in real time, whenever needed. Although this design is utopian, it will be helpful to shift the intellectual agenda from conditions that allow unilateral interventions to the design of appropriate multilateral institutions.

Challenges of intervention in Darfur

Placing the responsibility for authorization of all regional peace operations on the UN Security Council assumes that this body will always function in the interests of peace and security.¹⁹ However, veto threats at the Security Council have continually hampered the operationalization of protection through the use of force in Darfur. Nonetheless, within Africa itself, there is an emerging norm of intervention in situations of gross violations of human rights, genocide, war crimes and state collapse.²⁰ However, even though this new norm is laudable, its implementation and internalization faces financial, political and ideological challenges.

18 D. Arcchibugi "Cosmopolitan Guidelines for Humanitarian Intervention, Alternatives, Global, local, Political" Vol 29, No. 1, Spring (2004) pp.1-21

19 Rosemary Durward, 'Security Council Authorization for Regional Peace Operations: a Critical Analysis,' International Peacekeeping, Vol. 13/3 September, pp. 350-365. 2006

20 David J. Francis, Uniting Africa; Building Regional Peace and Security Systems, Ashgate,. (2006) p.110

Humanitarian intervention is more often than not a political act rather than a neutral genuine act of saving lives of innocent civilians in a third state. Taylor Seybolt challenges the core humanitarian concepts of political neutrality and duty-based, or deontological, ethics. Integrating just war reasoning and deterrence theory with comprehensive empirical analysis of landmark cases, he argues that humanitarian intervention is inherently a political act that must be judged by its consequences, not its motivation²¹

The scenario of the Darfur conflict is the first time in history that one government has accused another of ongoing genocide. At the same time, responses to the mass killing in Sudan have been wholly inadequate to protect civilians, as they were during the violence in Rwanda, Bosnia and Herzegovina, and many other places of mayhem. The reluctance to act reflects the tension between the emerging norm of human security and the continued dominance of traditional security concerns, respect for state sovereignty, and a very practical recognition that stopping the killing is difficult and dangerous. This tension has been played out in recent years both at the highest political level and down in the dirt of operational practice.

The concept of states' responsibility to protect civilians has drawn sharp reactions from many governments, which saw in it the legitimating of military intervention by strong states against weak ones. Their criticisms appeared to be borne out in 2003 when the USA tried to justify its invasion of Iraq in humanitarian terms after its initial justification—that Saddam Hussein possessed weapons of mass destruction—was proved false.

21 Taylor Seybolt's book is essential reading for anyone interested in humanitarian intervention. It is the leading study on when humanitarian intervention will produce humanitarian results, and when it will only make things worse.

Despite the misgivings of many countries, human security as a justification for military intervention under certain circumstances has gained widespread acceptance. The UN Secretary-General's High-level Panel on Threats, Challenges and Change endorsed 'the emerging norm that there is an international responsibility to protect civilians in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign governments have proved powerless or unwilling to prevent'.²² Former Secretary General of the UN, Koffi Annan carried forward this endorsement in his report to the UN General Assembly, 'In larger freedom'.²³

The crises in Sudan has proved that not all member states abide by AU norms and that some important, stronger and richer regimes are able to oppose and successfully prevent intervention in their countries or dictate the terms of any intervention. These problems indicate that the decisive impact of the Darfur crisis, even though it has not destroyed the AU peacekeeping framework as a whole, has shown 'how a determined government could use political demands to block its operations'.²⁴ The challenge to regional organizations is that as peace operations are expanding and norms are being institutionalized, so too is the level of resistance to them by state and non-state actors.²⁵ The fact that the AU PSC continued to seek

22 United Nations, 'A more secure world: our shared responsibility', Report of the High-level Panel on Threats, Challenges and Change, UN documents A/59/565, 4 Dec. 2004, and A/59/565/Corr., 6 Dec. 2004, URL <<http://www.un.org/secureworld/>>.

23 United Nations, 'In larger freedom: towards development, security and human rights for all', Report of the Secretary-General, UN document A/59/2005, 21 Mar. 2005.

24 Richard Gowan, 'The Strategic Context: Peacekeeping in Crisis, 2006-2008,' *International Peacekeeping*, vol. 1, no. 4, August 2008, pp. 453-469.

25 Ian Johnston, Bruce D. Jones, A. Sarjoh Bah and Richard Gowan, *Annual Review of Global Peace Operations*

Sudan's consent for the transition of the force into an expanded UN mission, highlight the gap between the interventionist provisions of the AU's Constitutive Act and the practical political complexities of implementation.²⁶

The term 'espace humanitaire' was coined by former Médecins Sans Frontières (MSF) president Rony Brauman, who described it in the mid-1990s as 'a space of freedom in which we are free to evaluate needs, free to monitor the distribution and use of relief goods, and free to have a dialogue with the people'. PoliticsDictionary.com defines it as a neutral zone occupied by international aid agencies in a region which is at war.

What is intended is an environment in which humanitarian organizations can discharge their responsibilities both effectively and safely.²⁷ The difficulties faced by humanitarian agencies in Darfur are far from unique to that country. In Burma, Iraq, Uganda, Chechnya and other countries, the space for humanitarian action is being increasingly restricted, due to either increasing violence against humanitarian aid workers or to increasingly hostile state regulation of the action of international agencies or, to a combination of both these factors. In northern Uganda, Darfur and Chechnya, international agencies have adopted 'remote control' methods of intervention whereby relief operations are implemented by local teams who are coordinated from a 'safe' location at some distance from the actual site of intervention. 'Remote' interventions may appear to be the best and most pragmatic approach to fulfilling the humanitarian imperative under highly constrained circumstances. In addition, it could be said that, by drawing on and

2007: Briefing Paper, New York, Centre on International Cooperation, 2007, p. 2.

26 Refer to discussion in Chapter I p. 11.

27 H. Yamashita . Humanitarian Space and International Politics: The Creation of Safe Areas, (Hampshire England: Ashgate Publishing Limited 2004) p. 4

developing local capacities, these interventions can improve levels of local participation and ownership, and thereby lay the foundation for a sustainable transition from relief to development while simultaneously sowing the seeds for a gradual democratic transformation of society.

The question remains, however, whether humanitarian space exists and how the international community will navigate the road ahead to best support sustainable peace in the context of global insecurity.²⁸

In the case of Darfur availability of humanitarian space is a big issue as the government of the day remains part of the conflict by assisting the janjaweed. In fact at some point in 2009 13 NGOs were expelled by the government thus bringing to a halt humanitarian assistance that they had brought to the affected populations.

There are principles that govern humanitarian intervention, however in the case of Darfur, they do not add value as some of them like consent of host government before carrying out an intervention may not always be forthcoming thus exposing populations to abuse of human rights by the host states.²⁹ Principles of neutrality and impartiality have also not been adhered to as most of the humanitarian assistance is normally based on intervening state's own national interests.³⁰

28 . J.S Meharg. , *Helping Hands and Loaded Arms: Navigating the Military and Humanitarian Space*,(Canada, The Canadian Peace Keeping Press 2007) p. 216

29 Refer to Chapter 3 pp. 59-62 for a detailed discussion on the shield being used by the GOS to support non intervention in its "internal affairs"

30 Refer to Chapter 3 pp. 64 and 72 on China's vital interests in Darfur

responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity". The resolution commits the Council to action to protect civilians in armed conflict. Thus there is a basis of humanitarian intervention in Darfur and the shield of sovereignty and nonintervention should not be used as a shield by the GOS.

2. The international states intervention: redefining sovereignty

Humanitarian intervention requires that first, the action must be taken against the consent of the target state; second, there must be abuse of state sovereignty by a state/states and by doing so, the human rights of its nationals and/or others are abused; third, it has to involve threat of or use of force² by a state or group of states or an international organization with or without the consent of the United Nations and; fourth, it is aimed at preventing, limiting or stopping serious violations of human rights on a large scale, especially where the government of a subject state is either perpetrating the violations or is unable or unwilling to allow international action to be taken.

From the aforementioned requirements, we deduce evidentially that intervention is an act that takes place as an exception to the general rule of non interference with the internal affairs of a state and this takes place or is allowed to take place especially where there is widespread abuse of human rights.

When the UN Security Council issued Resolution 1706, which authorized the UN mission in Sudan "to use all necessary means" to enforce its mandate in its area of deployment. Bashir opposed this resolution on grounds that it amounted to an unacceptable violation of Sudan's sovereignty, and instead called on the UN to help fund African Union troops on the ground. He

² Supra note

argued that Sudan should not be the first recolonised country under the banner of humanitarian action in Darfur, adding that AU troops in Sudan were in conformity with Chapter VIII of the UN Charter, which grants regional organizations jurisdiction over conflict affecting their geographic areas.

The critical issue in any debate on humanitarian intervention is the need to harmonize intervention with the principle of sovereignty, which in essence requires that a sovereign state be treated as an independent political unit, its territorial integrity be respected, and it be allowed to pursue its domestic affairs without external interference. While States were sovereign in their international relations, it was also assumed that within each State there was a 'sovereign' law-maker, more or less unlimited by law. Whatever may have been the case in the past, it seems clear that sovereignty is no longer a viable concept for explaining either the role of the State in international affairs or the internal arrangements of a modern State.³

Internationally, it is not viable on the political level: no State today, even the United States, is able to act independently. Nor is it viable legally: all States actually accept today the constraints of international law, although they may differ about what it requires.

In the situation with President Al Bashir, the United Nations and the International Criminal Court were able to circumvent the sovereignty issue by exerting military humanitarian intervention under the Responsibility to Protect Doctrine.⁴ "Although there have been other attempts to redefine the concept of sovereignty and the place of forcible intervention in a country

³ Interview conducted on 11th September 2010 with Dr. Kithure Kindiki a Lecturer at the University of Nairobi

⁴ Refer to Chapter 4 on the extensive discussion on the issue of sovereignty and the need of humanitarian intervention

where gross and systematic human rights violations are taking place, it is the 2001 *Responsibility to Protect* Report of the International Commission on Intervention and State Sovereignty (ICISS, 2001) that broke new normative ground on this matter. The report proposed a reconceptualization of sovereignty – as responsibility rather than only a right. According to the report, sovereign states have the primary responsibility to protect their people from avoidable catastrophe, but when they are unable or unwilling to do so, that responsibility must be borne by the wider community of states.”⁵

This study therefore recommends that modern states view sovereignty as an imaginary boundary, a transparent glass that can be broken to ensure that the world does not watch crimes against humanity unfold under the guise of respecting state sovereignty. ⁶

3. Peaceful means of intervention in place or in addition to humanitarian intervention

Although the subject under review is on forceful intervention, it is also important that other peaceful means be used especially where forceful means seem not to be the best option in order to avert human suffering.

NGOs play an important role in ensuring assistance and protection to displaced persons and refugees. NGOs deliver more aid today than the whole UN system and offer protection by their very presence. They help save hundreds of lives. Mary Anderson⁷ stresses that NGOs have done much good. Still, there have been many instances where NGO aid produced unintended and even

⁵ International Criminal Court. “ICC issues a warrant of arrest for Omar Al Bashir, President of Sudan”, Press Release, March 3, 2009 (accessed October 17, 2009)

⁶ Refer to Chapter 4 on the extensive discussion on the issue of sovereignty and the need of humanitarian intervention

⁷ M. Anderson, *Humanitarian NGOs in Conflict Intervention*, in *Managing Global Chaos*, C. Crocker, F. Hampson and P. Aall, (Washington, D.C.: United States Institute of Peace Press, 1996) pp. 343-354.

counter-productive consequences - circumstances of violent conflict which add complexities to the operating environment of international NGOs that often distort the impact of their interventions.

While humanitarian NGOs have been effective in the delivery of assistance and protection, they have inadvertently assumed the role of legitimizing and sustaining an unjust world order without fully understanding how their deepest humanitarian impulses are mobilized to sustain domination in the international system⁸. Whereas humanitarian NGOs easily focus on the internal causes of humanitarian crisis they rarely examine its international causes. They tend to ignore larger global processes and concentrate on local events, contexts, and institutions. This feature however transforms these NGOs from being agents of change to agents of status quo as often the principal causes of humanitarian crisis are global in nature. Humanitarian NGOs are also driven by donor priorities who often have selfish interests rather than local needs. A striking feature of any analysis of official humanitarian aid is how a small number of donor countries are able to exert a significant influence over the shape of the humanitarian system; humanitarian NGOs often legitimize or delegitimize the use of force against third world countries and increase/reduce in general the role of the military in a humanitarian crisis. They can today, given their knowledge production and dissemination functions, shape the response of hegemonic states to a humanitarian crisis. This has like in the case of Darfur resulted in the expulsion of INGOs by Al Bashir as they were perceived to be representing interests of the west.

⁸ Prof B.S.Chimni, School of International Studies, Jawaharlal Nehru University, New Delhi, India, Paper for the ICVA Conference on NGOs in a Changing World Order: Dilemmas and Challenges, Geneva, February 2008 pp. 14-

By failing to consider the political implications of their work, NGOs have in many cases exacerbated the very conflicts and violence they were seeking to relieve. NGOs bring new resources into a conflict situation. During war, each side tries to acquire and control resources, and so NGO aid can present a new focus for struggle. Anderson lists a number of ways in which NGO assistance can become distorted and actually contribute to the conflict. Warring factions may "tax" the NGO for the right to deliver their aid. Those "taxes" then support the war effort. Aid may be stolen and redirected to the fighting parties. Resources given to victims may be passed on to friends and relatives who are engaged in fighting. NGOs built infrastructure, such as roads, may enable military troops to travel farther, faster. Local, NGO-trained specialists may be conscripted into military service. Publicizing human rights abuses can provoke both increased outrage and a defensive response in the perpetrators, and so further harden their opposition. Such publicity can also promote a dehumanized image of the perpetrators.

The changing nature of war leads to three new complexities for NGO interventions. First, such wars are not governed by the international codes of war. Second, it is difficult to decide where sovereignty and political legitimacy resides during a civil war. Third, it is difficult to decide where moral legitimacy resides during an opportunistic war or attempted coup. With whom should an NGO negotiate, and to whom should they lend aid in such cases?

This study therefore recommends that humanitarian aid agencies ensure that their efforts are to relieve human suffering rather than exacerbate it. It further supports Anderson's recommendations that, in the face of such conflicts, NGOs give up their apolitical stance and denounce war itself. NGO interventions might then be directed toward supporting and protecting local opposition to war, and to fostering individual's attempts to disengage from war. This will

require developing alternative methods of distributing assistance, so that aid is less easily misdirected into the war effort. NGOs might also seek to foster economic cooperation and interdependence between non-combatant members of warring groups.

Authors agree that to have a definitive peace in Darfur, the root causes of the conflict must first be identified and dealt with one by one otherwise this conflict will continue for more years to come. Alex De Waal emphasizes the importance of involving the locals in any peace initiatives if these will be of any good.⁹

⁹ A. De Waal, *The Search for Peace*, (Harvard: Harvard University Press, 2009, p. 412

Appendix: Interview Schedules.

INTERVIEW 1

Interview conducted on 9th September 2010 with Florence Oduor a Training Coordinator/Facilitator at International Peace Support Training Centre, Karen, Nairobi

1. In the case of Darfur, is sovereignty a right or a responsibility?
2. In your view, what has hampered intervention by the UN in the Darfur situation?
3. In your view, what has interfered with the Darfur Peace Process?
4. Can you explain why it is the small African states that have intervened in the Darfur crisis by sending peace keepers whereas no major state has intervened.
5. Is the peace keeping process assisting in dealing with the current situation in Darfur?
6. In your view where has the international community gone wrong in their pursuit to end the violence in Darfur?
7. Do you think that the current political situation in Sudan will allow for a free and fare referendum in 2011?

INTERVIEW 2

Interview conducted on 17th June 2010 with Sudanese Ambassador to Kenya Amb Majok Guangdong

1. Is the peace keeping process assisting in dealing with the current situation in Darfur?
2. In your view where has the international community gone wrong in their pursuit to end the violence in Darfur?
3. Do you think that the current political situation in Sudan will allow for a free and fare referendum in 2011

INTERVIEW 3

Interview conducted on 13th September 2010 with Truphosa Anjichi Humanitarian Officer at OCHA UN Gigiri Complex Nairobi

1. In your view, how can lasting peace be found in Darfur?
2. Do you think the international community is committed to seeing the conflict in Darfur come to an end

INTERVIEW 4

Interview conducted on 11th September 2010 with Dr. Kithure Kindiki a Lecturer at the University of Nairobi

1. Many scholars, writers and other ordinary people have from the beginning of the Darfur war tried to discuss and find a possible solution to the current situation in Darfur. In your view, how can lasting peace be achieved in this region?
2. The United States of America unveiled its policy on Darfur in 2009, whereby Barack Obama's administration asked the Government of Sudan to take steps to end the war. The Sudan has been promised incentives if they end the war completely but at the same time sanctions will be put in place for as long as the war continues. Do you think that the US is justified in doing this and how has this move been taken by the government of Sudan?
3. Do you think the international community is committed to seeing the conflict in Darfur come to an end?

INTERVIEW 5

Interview conducted on 17th June 2010 with Bismark Oromo a Sudanese refugee living in Kenya

1. Is the peace keeping process assisting in dealing with the current situation in Darfur?
2. In your view where has the international community gone wrong in their pursuit to end the violence in Darfur?
3. Do you think that the current political situation in Sudan will allow for a free and fare referendum in 2011?

BIBLIOGRAPHY

Brownlie, I (1963) International Law and the use of Force Oxford: Clarendon Press

Brownlie, I (1998) Principles of Public International Law (5th ed) Oxford: Clarendon Press

Buerghenthal, T (1995) International Human Rights St. Pauls; Minn; West

J.L Holzgrefe and R.O Keohane (eds) 2003 ; Humanitarian Intervention: Ethical, legal and political dilemmas Cambridge, Cambridge University Press.

Lyons, G.M and Mastanduno, M. (1995) Beyond Westphalia, State Sovereignty and Humanitarian Intervention.

M. Mwangiru, (Nairobi Water mark 2000) Conflict: Theory, Processes and Institutions of Management .

Malcolm N. Shaw, 1947 International Law 4th Edition, UK, University Press, Cambridge.

Nachmias D. and Nachmias C.F Research Methods in the Social Sciences 5th Edition
Replika Press Pvt, Ltd, 1996

Sassoli, M. & Bouvier, A (1999) How does law protect in war? Geneva ICRC

Ronzitti, N. (1985) Rescuing Nationals Abroad on grounds of Humanity; Dordrecht;

Martinus Nijhoff

Casese, A. *Ex Injuria ius oritur. Are we moving Towards Legitimation of Forcible Humanitarian Countermeasures in the World Community?* (1999) 10 European Journal of International Law

Daniel, K. & Musungu, S. F *The African Union and the Question of Humanitarian Intervention: A New Dawn?* (2002) 1 East Africa Journal of International and Comparative Law 83

Ezejiolor, G & Quashigah, EK *The United Nations and Humanitarian Intervention in the Contemporary World Situation* (1993) 5 Proceedings of the Annual Conference of the African Society of International and Comparative Law

Fonteyne, JPL *The Customary International Law Doctrine of Humanitarian Intervention: Its current validity under the UN Charter* (1979) 4 California Western International Law Journal

International Crisis Group (ICG) Report No. 80; *Sudan: Now or Never* in Darfur, 25th May 2004. International Independent Commission on Kosovo (2000) ; *The Kosovo Report*; Oxford University Press.

International Report of the Commission of Inquiry on Darfur to the United Nations Secretary General pursuant to Security Council Resolution 1564 of 18 September 2004. Geneva 25 January 2005.

J.L. Holzgrefe and R.O. Keohane (Eds), *Humanitarian Intervention: Ethical, legal and political dilemmas* (Cambridge: Cambridge University Press, 2003)

Kindiki, K. *The legality and applicability of Humanitarian Intervention to internal conflicts in Africa* (2001) 7 East African Journal of Peace and Human Rights-16

Nurina Kiplagat; *Darfur and the case for intervention*; Ploughshares Monitor, Spring 2005

Reeves Eric; *Is there Threshold for Humanitarian Intervention in Darfur?* October 8 2004

W.E. Hall, *A Treatise on International Law*, 7th Edition, (Oxford : Oxford University Press 1917)

Charter of the United Nations signed on 26 June, 1945, San Francisco; Entry into force: 24 October 1945.

Charter of the OAU

Constitutive Act of the AU CAB/LEG/23.15; Adopted in Lome, Togo 11 July 2000; Entry into force on 26 May 2001

ECOWAS Mechanism for conflict prevention, management, resolution, peace and security, 1991.

Montevideo Convention on the Rights and duties of States; Entry into force on 26th
December, 1933

Protocol relating to the Establishment of a Peace and Security Council of the African
Union, adopted on 10 July 2002, Durban South Africa

Statute of the International Court of Justice

<http://www.icrc.org>

<http://www.african-union.org>

<http://www.un.org>

<http://www.genocidewatch.org>

<http://www.crisisgroup.org>