HUMANITARIAN INTERVENTION BY THE UNITED NATIONS: A CASE STUDY OF SOMALIA AND RWANDA INTERVENTIONS

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Declaration

This dissertation is my original work and has not been submitted for a degree in any other university.

Faith Mbithe Kisinga. 5th November 2001

This dissertation has been submitted with my approval as University supervisor.

5 November 2001

DR. MAKUMI MWAGIRU

Dedication

To the two finest people

Who I am delightfully blessed

To call

My parents

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CHAPTER ONE

Introduction

The notion of human rights is not new. Over two thousand years ago, many religious texts emphasised the importance of equality, dignity and the responsibility to help others. By the 17th century, the idea of natural rights had developed. The 18th and 19th centuries were notable for revolutions in which claims for fundamental rights and freedoms featured prominently. By the 20th century, with the creation of the United Nations Organisation, these rights had gained tremendous popularity. While the international community was, (when the Charter was written), principally concerned with ensuring the maintenance of international peace and security, the protection of fundamental rights and freedoms was also perceived to be significant. There have, however, been ongoing debates concerning the significance that fundamental rights and freedoms deserve to be accorded, in relation to the other Charter objectives. These debates, amongst others have put the international community in a dilemma with regard to which principle, non-intervention of fundamental rights and freedoms, should be given priority. Nonetheless, one does not necessarily exclude the other.

Shortly after the enshrinement of human rights in the Charter, came the Universal Declaration of Human Rights (UDHR). While many have argued that this Declaration served only as a sign of the commitment of member states to respect fundamental freedoms, and that it was therefore not legally binding, the UDHR, nonetheless, has become the springboard from which a host of human rights conventions have sprung. The Declaration has not only influenced the development of international human rights

law, but has also become part of customary international law - some even argue, of *jus cogens*.

The first fifty years after the Declaration witnessed intensive activity in the human rights field. Not only were treaties and conventions concluded, but an institutional framework to ensure the implementation of these rights and obligations was also developed. Constituted within this framework were a variety of human rights mechanisms entrusted with the mandate of the compliance of states' with the requirements set out within the treaties.

However, the exuberance that went with setting and implementing human rights standards was overshadowed by several factors. Primary amongst these was the disappointment of the expectation that state members would yield willingly to the work of institutions set up by the United Nations (UN) for the purpose of ensuring the promotion and protection of human rights. Indeed, many states resented the probing activities of these mechanisms. Further, compliance with treaty obligations (for example the submission of periodic reports) was viewed as a burden even by signatory states.

This disturbing trend notwithstanding, it was still hoped that in the long-term, states would come to fully embrace the recommendations and activities of these institutions. In fact, it has been postulated that apartheid in South was dismantled partly due to the constant pressure exerted on the government to comply with its human rights obligations. The extent to which this is true is, debatable. The fact however remains that the instruments and institutions set up within the framework of the UN had as their objective, the long-term implementation of human rights in member states. The short-

term enforcement of human rights standards was never seriously considered as an option as states continued to guard their sovereignty jealously.

In time however, the human rights mechanisms were to prove seriously wanting in their response to grave and large-scale violations of human rights. Hence, the UN was in a dilemma during the brutal massacre of hundreds of thousands of victims of the Khmer Rouge. It stood by also as the genocide in Rwanda claimed more than half a million people. It was increasingly becoming evident that the UN would have to acknowledge the inadequacy of its human rights mechanisms and resort to alternative avenues where immediate response or action was deemed imperative. Further, the doctrine of non-intervention was increasingly questioned where massive violations of human rights took place within the territory of sovereign states.

Indeed, according to Kofi Annan,

> 'The fact that we cannot protect people everywhere is no reason for doing nothing when we can. Armed intervention must always remain the option of last resort, but in the face of mass murder, it is an option that cannot be relinquished.[1]

However, the issue of humanitarian intervention, as revealed from time to time, has been more complex in its dimensions. National Interests tied to political will and conflicting policies have all conspired against effective and timely action. Further, the UN's shortage or lack of technical, logistical, financial and military capabilities has contributed to its reliance upon the "political will" of 'able' states. This is the difficult position in which the UN finds itself today where rapid response to massive human rights violations, entailing the large-scale loss of lives, is required. A position which has

[1] Annan, Kofi We the Peoples : The Role of the United Nations in the 21st Century (UN Dept. of Public Info. New York. 2000) p. 48

moved some critics to assert that there is little consistency in the practice of intervention, owing to its inherent difficulties and costs as well as perceived national interests.[2]

If the UN cannot undertake humanitarian intervention on behalf of victims of egregious violations, owing to divisions within the Security Council, there may be, as was the case in East Pakistan, Cambodia and Uganda, some states willing to unilaterally intervene. However, the problem with this resort is its non-universal sanction. Further, most critics of unilateral humanitarian intervention have argued that it 'could become a cover for selfish and gratuitous interference in the internal affairs of sovereign states'.[3]

In reality, many would prefer to see such decisions (to intervene) taken collectively, by an international institution whose authority is generally respected. The only institution competent to assume that role is the Security Council of the United Nations. Since the Charter clearly assigns responsibility to the Council for maintaining international peace and security, only the Council has the authority to decide that the internal situation in any state is so grave as to justify forceful intervention. Unfortunately, humanity is ill served when the Security Council is unable to move quickly and decisively in a crisis.[4]

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[2] Ibid

[3] Ibid

THE PROBLEM

According to Tom Farer[5] ,"...One thing that can be said with confidence is that human rights enforcement will remain highly politicised and therefore intensely controversial".

Needless delays, and actions that bring their victims too little, too late, characterised several large-scale human rights atrocities in the twentieth century. Some may say that this dented the UN's stature in the eyes of the international community. Nevertheless, it has also been said, and validly so, that the UN is only as good as the member states that compose it. Their attitudes and policies, in other words, determine the direction and speed with which the global organisation moves in cases of flagrant and large-scale violations of human rights. Here however lies the problem. The lack of convergence in policy shown by powerful member states, which has often been referred to as a "lack of political will " in the UN, has manifested itself severally during humanitarian crises. This has often resulted in the adoption of piecemeal measures or inaction in the face of massive atrocities.

On the other hand, while the letter of the UN Charter affords human rights a place of prominence in the organisation's objectives, no meaningful enforcement mechanisms are provided to effectively protect victims of violations on a massive scale. Indeed, the UN's mechanisms for protection of human rights are largely dependent on the cooperation of member states.

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[4] See Annan, Kofi A. The Question of Intervention : Statements by the Secretary-General (UN Dept. of Public Info. New York, 1999) p. 11

[5] Farer Tom J. 'The UN and Human Rights: More than a Whimper' in Richard Pierre-Claude and Burns Weston (eds.) Human Rights in the World Community : Issues and Action (University of Pennsylvania Press, Philadelphia, 1989) pp 194 – 207:205

This has prompted criticism of the UN from various quarters. Ullman wrote that the "UN human rights machinery has become so publicised as to be almost completely ineffective for either monitoring or for enforcement".[6] Rugie, adopting a more balanced perspective observed that UN activity and "international human rights instruments are designed not to protect human rights or to enforce human rights provision, but to nudge states into permitting their vindication".[7] On the other hand, in Henkin's view, "for the most part, human rights can only be promoted (and protected) indirectly by the UN".[8]

It can therefore be postulated that the UN, through its human rights mechanisms, is limited in undertaking urgent and effective action in halting grave and massive human rights violations. In this context, the Security Council, the only body of the UN with the authority to authorise armed intervention, provides an avenue for short-term enforcement of human rights. However, the Security Council has on various occasions been beset by concerns relating to sovereignty. Such concerns have accounted for a large part of the hesitation that accompanies the Security Council's decision making on enforcement.

Ironically and paradoxically though, member states have driven events at the UN so that state sovereignty has been weakened. States have used their initial sovereignty to create UN standards and UN supervisory procedures that later have restricted their operational sovereignty in the field of human rights. In legal theory, states are no longer free to treat even their own citizens as they wish. Internationally recognised human

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[6] Ullman, Richard 'Human Rights : Toward International Action' in Dominguez, Jorge I. et. al. (eds.) Enhancing Global Human Rights (McGraw-Hill, New York, 1979) pp 1-25:10.

[7] Rugie, G. Human Rights at the UN 1955-1985 : The Question of Bias *International Studies Quarterly* 32(3) (Spring, 1988) pp 26-32:26.

[8] Quoted in Forsythe, David P. The Internationalisation of Human Rights (Lexington Books, Lexington, 1991) p. 79.

rights impose standards that are binding on governments.[9] On the other hand, the international community has come to the understanding that the protection of human rights (that is those considered as creating obligations *erga omnes*) is no longer a matter exclusively within the domestic jurisdiction.[10]

As a result of the growing network of international legislation and the establishment of the human rights mechanisms, the conviction gradually took hold of UN member states that 'intervention' in the affairs of single states is fully justified, so long as serious and large-scale violations have been committed.[11]

Indeed, the Security Council has asserted the rights of humanitarian access in Bosnia, Iraq, Rwanda and Somalia. Such access, with or without permission of the state concerned cannot today be construed as intervention in the affairs of a state.[12] Less attention has been paid to formal jurisdictional limits and more and more simply to the likely effectiveness of intervention.

Apart from concerns of sovereignty, lack of leadership and political will in the UN and a general reluctance to act decisively has, quite unfortunately, characterised episodes of massive human rights violations. It has been observed[13] that underneath the lack of 'political will' lies a 'general reluctance by the US and other states to contribute to

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[9] Weiss, Thomas G. in Weiss, Thomas G. et. al. (eds.) The UN and Changing World Politics (Westview Press, Boulder, 1994) p 159.

[10] See the UN Report of the Human Rights Committee where it was observed I general comment that states have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing loss of life (Official records of the General Assembly 37th session. Supplement No. 40. UN Doc. A/3/40/1982 (par. 2).

[11] Antonio Cassese 'International Law in a Divided World' in Roberts, Adam and Kingsbury, Benedict (eds.) United Nations, Divided World : The UN's Role in International Relations (Clarendon Press, Oxford, 1993)pp298-315:306.

[12] Hopkinson, Nicholas The United Nations in the New World Disorder (Her Majesty's Stationery Office, London, 1993) p.5

[13] David Dorward 'Rwanda' in Learning the Lessons : UN Interventions in Conflict Situations (Community Aid Abroad, Public Policy and Education Section, Sydney, 1995) pp 82 – 92:85.

resolving (conflicts) which do not directly threaten their strategic interests, along with the general feeling which has gripped the Security Council since the blunders in Somalia in 1995 that it 'can't do', rather than it has an international legal responsibility to do what it can. Without Security Council authorisation, UN is paralysed from acting on behalf of victims of atrocious violations.

Nevertheless, National Interests remain a permanent feature of international relations and of the life and work of the Security Council. It is hardly surprising then that sometimes, the UN has had a problem reconciling national interests or mobilizing the Security Council behind the pursuit of basic Charter values as was observed during the Kosovo and Rwandan crises respectively.

As the initial response to the horror in Rwanda starkly demonstrated, it is becoming increasingly difficult to get UN member states to intervene forcibly anywhere, at least when vital national interests are not seen to be immediately involved.[14] The reality is that in the absence of threats to vital perceived interests, it is extraordinarily difficult for states to sustain domestic support for distant and risky military operations overseas. The experience of the US in Somalia and of Belgium in Rwanda is revealing in this respect. Ramcharan observes that, in so far as violations of human rights that threaten or breach international peace and security are concerned, the machinery...depends on the exercise of political will.[15]

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[14] Gareth Evans 'Co-operating for Peace: The UN role in Conflict Situations' in Learning the Lessons : UN Interventions in Conflict Situations op. cit. pp1-6:2.

[15] Ramcharan B.G. International Law and Practice of Early-Warning and Preventive Diplomacy : The Emerging Global Watch (Martinus Nijhoff, Dordrecht, 1991) p 21.

It is true that there have been a few situations in which the Security Council has acted in unity and in favour of human rights. However, the Council's authority is diminished because it lacks the means to intervene effectively when it wishes to do so.

The UN's ability to act quickly and decisively is dependent on the political will of the Security Council members and often, on the leadership of the U.S. The leadership role of the US is especially crucial as only the US possesses the capacity for global military projection. The UN relies heavily upon it. This is however, not to say that other countries are powerless, but that any sustained intervention will have to have US support.[16]

On the other hand, the UN's ability to effectively and speedily intervene is largely curtailed by its lack or inadequate supply of financial, logistical, military or other resources - a factor that has been even further compounded by the lack of political will and leadership necessary to marshal these resources. There seems to be no real prospect in the medium term future that most Northern States will contribute their troops or resources to UN operations when their national strategic interests are not vitally threatened.[17] Although national interests will continue to play a significant role within the Security Council, the UN's response to grave and widespread violations of human rights will need to be improved.

OBJECTIVES

The spirit of the UN Charter upholds the protection of fundamental human rights and freedoms. The letter of the Charter however, falls short of providing the UN with the

[16] Phillips, Robert L. and Cady, Duane Humanitarian Intervention : Just War vs. Pacifism (Rowman and Littlefield Publishers Inc. 1996) p. 86.

requisite mechanisms for the effective protection of these rights. Even though over the last fifty years, the emerging international community has permitted the establishment of a carefully developed, intricate and substantial mechanism for the protection and promotion of human rights, their ability to ensure the effective protection of victims of violent and massive human rights violations has been found lacking. Nevertheless, the UN's Security Council has on several occasions authorized the UN or member states cooperating with the UN, to intervene in situations where international peace and security has been threatened or breached as a result of grave violations of human rights. This study intends to:

- Investigate and establish through case studies of UN interventions in Rwanda and Somalia, whether humanitarian intervention has developed as a new exception to the rule against intervention.
- Assess UN response during cases of grave and massive violations of human rights and identify the causes for difficulties in securing rapid response.
- Suggest, on the basis of the case studies, means in the future, of ensuring the rapid and effective protection of human rights where violations on a massive scale occur or have threatened to break out.

JUSTIFICATION

Humanitarian intervention has generated intensive debate from a great number of scholars and politicians. The debate, however, has often centred around the legitimacy or otherwise, of unilateral intervention. More often, there seems to be a growing consensus that the UN (Security Council) is the only institution competent enough to authorize

[17] David Dorward 'Rwanda' op. cit. p. 91

humanitarian intervention. Whilst there has been a lot of literature on general human rights violations, very little has addressed the crucial area of concern that forms the basis of this study. That is, what can be done to improve the UN's response to grave and widespread violations of human rights. It is possible that the gap in literature has been due to the notion that widespread atrocities, of the nature witnessed in Germany or Cambodia, constituted rare and isolated instances.

However, the twentieth century has made it manifest that the human capacity to visit such violations that shock the conscience of mankind is not as unique as was once believed. This century witnessed a number of human rights atrocities on a large-scale; violations which were, unfortunately, not quickly halted due to the international community's failure to foresee and thus prepare in advance, short-term enforcement measures for the protection of human rights. The genocide in Rwanda in 1994 was accompanied by the faltering response of the international community. The efforts undertaken by the UN High Commissioner for Human Rights, the Commission on Human Rights and a Special Rapporteur, the later establishment of an International Tribunal for Rwanda and Human Rights Field Operation in Rwanda, cannot make up for the inadequacy in the UN's response to the massacres as they occurred, and during subsequent events in Rwanda.[18]

There are no meaningful enforcement mechanisms or methods to stop genocide once it is in progress. There is no magic formula which will prevent genocide from occurring again. Yet, in today's world, armed battles are less frequently part of a war

[18] The United Nations and Rwanda 1993-1996 (The UN BlueBooks series, Volume X, Dept. of Public Info. New York, 1996) p. 4.

between countries, and more often a civil conflict occurring within the borders of a single country. Conflicts like this are inherently prone to genocide.

Great delays and procrastination has characterised a number of human rights emergencies involving grave violations on a large scale. There is a need to establish tripwires and benchmarks to abort the lengthy deliberation processes and allow the world community to make decisions quickly and respond immediately to victims of massive human rights violations. The growing danger that human disaster of the kind that occurred in Somalia, and in Rwanda will recur underscores the importance of learning from such experiences and improving the international community's preparedness.

LITERATURE REVIEW

The literature concerning the role of the UN in the field of human rights is vast. Many writers have also focussed on the effect of globalisation and universalisation of human rights on notions such as state sovereignty and territorial integrity. There has also been a lot of attention paid to the implications of internal conflicts and human rights violations on international peace and security. Some literature has focussed on the issue of humanitarian intervention and its implications on the international system of states. The limitations experienced by the UN in multilateral interventions has also been the subject of a few works. The following is a review of the literature having a bearing on this study.

Reinterpretation of Notions of State Sovereignty and Universalisation of Human Rights

Schermes maintains that since international law has expanded to protect fundamental human rights, in particular situations there may be an international obligation to interfere in the internal affairs of states when there is a flagrant violation of these rights.[19]

Lauterpacht similarly affirms that a substantial body of opinion and practice has supported the view that when a state commits cruelties and prosecutes its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind, intervention in the interests of humanity is legally permissible.[20]

According to Ramsbotham, these considerations of humanity are now grounded not just in natural law or general principles of law recognised by civilised nations, as in the past, but more concretely on the foundation of what is called 'the principles of the UN Charter'.[21]

Waltzer[22] contends that Article 2(4) of the UN Charter which specifically forbids intervention by one state into the affairs of another, except in self defence is flawed because it is in conflict with the basic human good. He affirms that the legalistic understanding of sovereignty must be conditioned by the idea of normative standards of universal human rights which guarantee the dignity of the individual.

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[19] Schermes, H.G. The Obligation to intervene in the Domestic Affairs of States (Westview Press, Colorado, 1990) p.588.
[20] Lauterpacht, H International Law (Oxford University Press, London, 1995)
[21] Oliver Ramsbotham and Tom Woodhouse Humanitarian Intervention in Contemporary Conflict : A Reconceptualization (Polity Press, Cambridge, 1996) p. 19

[22] Waltzer, M Just and Unjust Wars (Basic Books, New York, 1977)

Weiss[23] discusses the role of the UN in a world that poses problems that are distinct from those which the world body faced in the immediate post World War II period. He reviews how the UN, especially through Security Council action, has undertaken all sorts of deeply intrusive actions pertaining to human rights inside states in an effort to resolve security problems. It is submitted that the UN Charter conveys powers of auto-interpretation on the Security Council. Further, that the precise boundaries of state sovereignty, in light of the evolving international human rights standards, are elusive. In his opinion, the limits to UN action respecting Article 2(7) and domestic jurisdiction are political. The provision will be re-defined to enable the UN to act where it wishes to do so.

The UN has been quite active in redrawing the line between sovereignty and domestic jurisdiction. Annan[24] affirms that sovereignty is a matter of responsibility, not just power. Further he does not perceive how, in cases of genocide or raging conflict involving the death of countless civilians, the UN could be prevented from intervening in a state's internal affairs.[25] He portrays the prevalent view within the international community concerning the relative status of State Sovereignty.

Former Secretary General, Javier Pérez de Cuéllar, went so far as to posit " an irresistible shift in public attitudes toward the belief that the defence of the oppressed in the name of morality should prevail over frontiers and legal documents".[26]

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[23] Weiss et. Al (eds.) The UN and Changing World Politics op. cit.
[24] Kofi Annan 'Peacekeeping, Military Intervention and armed Conflict' in Jonathan Moore (ed.) Hard Choices (Cambridge University Press, Cambridge, 1998) pp.56-67:67
[25] Kofi Annan The Question of Intervention op. cit. See also Nelson Mandela's compliment of Kofi Annan's approach to state sovereignty and human rights in the KOSOVO REPORT (The Independent International Commission on Kosovo at Http://www.reliefweb.int/library/documents/the Kosovoreport
[26] UNDP/Press Release SG/SM/4560 (April 24, 1991)

Schacter[27] also contends that while governments and legal authorities have not expressly considered humanitarian intervention as a permissible exception to the prohibition of force in Article 2(4) of the UN Charter, the concern for State Sovereignty is less evident in respect to action by the UN.

However, Gregg maintains that though the fence erected by article 2(7) has been breached in a place or two the UN has remained a body with largely recommendatory, not binding authority.[28] Gregg, while undertaking a study of the Gulf Crisis concedes that the UN has authority to act intrusively. However, he asserts that the principle of State Sovereignty continues to command powerful political support.

Human Rights Violations and International Peace and Security

In legal terms, 'international peace and security' has traditionally been narrowly defined as the maintenance of inter-state order. However, the practice of the Security Council can be seen to have modified this concept to include grave humanitarian crises and it is generally recognized among writers that the Security Council now has an exclusive right to authorize the use of force for the purpose of preventing or stopping widespread deprivations of internationally recognised human rights.

Annan[29] affirms that 'the implications of human rights abuses and refugee flows for international peace and security are forcing us to take a fresh look at sovereignty from a different perspective'.

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[27] Schacter O. 'Sovereignty and Threats to Peace' in Weiss T.G. (ed.) Collective Security in a Changing World (Lynne Riennar Publishers Inc., Boulder and London. 1993) pp 19 – 25:20

[28] Robert Gregg About Face? The US and the UN (Lynne Riennar Publishers, Boulder and London, 1993).

[29] Kofi Annan 'Peacekeeping. Military Intervention and Armed Conflict' op. cit.

The suggestion that respect for sovereignty is conditional on respect for human rights has also been reflected in the practice of the Security Council. In the post Cold War period, the Security Council has availed itself of a right of humanitarian intervention by adopting a series of resolutions which have progressively expanded the definition of a "threat to international peace and security" under Article 39 of the Charter to allow for Security Council mandated military intervention to respond to grave humanitarian crises, even where such crises have been purely domestic in nature. This trend has been noted by several writers.[30]

Tanca, for example states that state sovereignty must be surrendered in the pursuit of the protection of human rights, even when the situation concerned is deemed to be a purely internal matter or one that does not necessarily involve the violation of any state's sovereignty.[31]

Jones'[32] strict interpretation however deviates from the gathering momentum seeking to allow for UN intervention in cases of gross violations of human rights. He categorically maintains that the principle of non-intervention was intended to preside over matters essentially within the domestic jurisdiction of states, the only exception being with regard to the competence of the Security Council to authorise enforcement measures where such situations posed a threat to the peace, breach of the peace, or amounted to an act of aggression. He makes a subsequent contention, that since intervention is only permitted where a threat to or breach of the peace occurs, the UN

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[30] See Guicherd, C.'International Law and the War in Kosovo' *Survival* 41(2) pp.19-34:pp 22-23; O'Connell, Mary Ellen 'The UN, NATO and International Law After Kosovo' *Human Rights Quarterly* 22 (2000) pp 57-89:68-69

[31] Tanca, Antonio Foreign Armed Intervention in Internal Conflict (Martinus Nijhoff Publishers, Dordrecht, Boston, London, 1993

[32] Jones Goronwy The United Nations and the Domestic Jurisdiction of States : Interpretations and Applications of the Non-Intervention Principle (University of Wales Press, Cardiff, 1979)

was not conceived as an instrument for the enforcement of human rights, but of international peace and security; one that is however countered by Forsythe. Forsythe[33] asserts that security, as it appears in the UN Charter, is as much about the protection of individuals as it is about the defence of the territorial integrity of states.

Of similar school of thought, Farer contends that human rights are subordinated in the UN's hierarchy of purposes and especially in the Charter's authorization of UN enforcement action.[34]. To him, where the UN is involved in intrusive operations, its first and main priority should be international peace and security – other objectives will take second place. Franck and Rodley go even further and assert that a cursory look at resolutions, declarations and conventions on human rights does not reveal recognition of the UN's recourse to enforcement action. Though some of the UN human rights mechanisms make an effort to provide for a measure of international surveillance, none provides for collective, let alone unilateral military enforcement. In their view, this could mean that no such enforcement was intended.[35]

Nonetheless, McDougal and Lasswell submit that the overriding commitments to the protection and fulfilment of human rights are, in the sphere of the Charter, 'equal with that of the maintenance of peace and security'.[36] Due to this overriding commitment to human rights – a goal interdependent with that of maintaining international peace and security – it has been postulated that 'the Charter prohibition of the use of armed force must be interpreted in a way as to take this commitment into

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[33] Forsythe, David P. The Internationalisation of Human Rights (Lexington Books, Lexington, Massachusetts, 1991)

[34] Farer 'The UN and Human Rights: More than a Whimper' op. cit.

[35] Thomas Frank and Nigel Rodley 'Humanitarian Intervention' *American Journal of International Law* 67 (1973)

account: it being in the common interest as a mode of maintaining international peace ands security.[37]

The concepts of international peace and security have therefore come under increasingly humane interpretations as contrasted to earlier ones that tended to centre on political and military variables.

Newsom, contends that the original design for peace, outlined in 1945 in the Charter, seems to be re-emerging. 'This design contains three main elements - the maintenance of international peace and security, with the related need for arms control and disarmament; a co-operative approach to the great economic and social issues, which also have profound implications for peace and stability; and the development of the role of law and universal respect for human rights'.[38]

The Legitimacy of Humanitarian Intervention

The debate in international law on the legitimacy of humanitarian intervention has involved restrictionist interpretations of the UN regime, which were mainly used to rule out forcible humanitarian intervention, and counter-restrictionist interpretations that were used to rule it in. The restrictionists argue that the rule contained in Article 2(4) of the UN Charter represents more than an international consensus binding state actors; it is essentially a higher law among nations viewed as fundamental to the survival not only of national entities but of mankind in its entirety.[39] In order to eliminate the scope for arguments in favour of legitimate intervention, the restrictionists adopt two main strategies. First, they invoke a 'broad' interpretation of the UN Charter's Article 2(4), in

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[36] McDougal M.S., Lasswell H.D and Chen, L.C Human Rights and World Public Order : The Basic Policies of an International law of Human Dignity (Sweet and Maxwell, London, 1980) p. 241.
[37] Id.
[38] David Newsom (ed.) The Diplomatic Record 1990 - 1991 (Westrview Press, Boulder, 1992).p.23

order to rule out not only aggression, but also intervention. Secondly, they adopt a 'narrow' definition of intervention.

The counter-restrictionists on the other hand argue that there are two major purposes embodied in the UN charter; the maintenance of peace and security and the protection of human rights. The main thrust of their argument is that humanitarian interventions only contravene Article 2(4) of the UN charter if they are thought to affect the 'territorial integrity:' and 'political independence' of the state against which they are directed and that humanitarian intervention, far from being inconsistent with the Charter purposes, furthers one of the major purposes of the UN, that is, the protection of human rights. Moreover, in their view, human rights deviations might represent a threat to the peace, thereby prompting the Security Council to act under the UN's Chapter VII jurisdiction.[40]

Restrictionists comprise of Ian Brownlie,[41] Scott Fairley,[42] Thomas Franck and Rodley Nigel,[43]Oscar Schacter,[44] John Norton Moore,[45] and Verwey W.[46] Counter-restrictionists include Richard Lillich[47], McDougal, Lasswell,[48] Reismann[49] and Téson.[50]

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[39] Fairley, Scott 'State Actors, Humanitarian Intervention and International Law: Reopening Pandora's Box' *Georgia Journal of International and Comparative Law 10(1)* (1980) pp 29-65

[40] See Arend, H.C and Beck, R.J 'International law and the Use of Force: Beyond the UN Charter Paradigm (Routledge, London, New York, 1993)

[41] See Ian Brownlie 'Humanitarian Intervention' in John Norton Moore (ed.) Law and Civil War in the Modern World (John Hopkins Press, Baltimore and London, 1974) pp. 217 – 229.

[42] Scott Fairley 'State Actors, Humanitarian Intervention and International law: Reopening Pandora's Box' *Georgia Journal of International and Comparative Law*, 1980 10(1) pp 29 - 65

[43] Franck, T. and Nigel,R 'After Bangladesh : The Law of Humanitarian Intervention by Military Force' 67 *American Journal of International Law* (1973)pp 275-305

[44] Schacter, Oscar 'The UN and Internal conflict' op. cit.

[45] John Norton Moore (ed.) Law and Civil war in the Modern World op. cit.

[46] Verwey W. 'Humanitarian Intervention under International Law' *Netherlands International Law Review*, 32(1985) pp 357 – 418.

[47] Richard Lillich 'Forcible Self-Help by States to Protect Human Rights' *Iowa Law review*, 53(1967) pp 325 – 351;
Lillich (ed.) Humanitarian Intervention and the UN (University of Virginia Press, Charlottesville, 1973);
_____ 'Humanitarian Intervention : A Reply to Ian Brownlie and a Plea for Constructive Alternatives' in John Norton Moore (ed) Law and Civil War in the Modern World op. cit.

There is a general agreement amongst restrictionist and counter-restrictionist writers that the agencies for undertaking humanitarian intervention are the authorized branches of international organisations.[51]. Furthermore, according to Damrosch and Scheffer[52] the focus of debate has shifted since the Gulf War. They state that there has been a transformation of the intervention component by substitution of the UN Charter Article 2(7) for Article 2(4) as the main focus of discussion. The issue therefore, is no longer primarily about self-help by states. The key question is: Should the international community move towards the development of collective mechanisms for responding to large-scale human suffering within states?[53]

Limitations to UN Humanitarian Intervention

It is arguable that UN authorized humanitarian interventions over the past decade reflect an emerging consensus in the international community that respect for fundamental human rights is now a matter of international concern. At the same time, however, the instances of Security Council inaction or lack of timely action in the face of humanitarian crises over the same period show that this international concern is often outweighed by political and structural obstacles.

Most writers agree that the mobilisation of international consensus for enforcement actions by the UN remains the largest hurdle in cases of massive violations of human rights. What seems to be necessary for a speedy response to grave violations

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____ 'Intervention to Protect Human Rights' 15(1969) *McGill Law Journal* pp. 205 – 220.

[48] Human Rights and World Public Order : The Basic Policies of an International law of Human Dignity

[49] Reissman M and McDougal, M. 'Humanitarian Intervention to protect the Ibos' in Lillich (ed.) Humanitarian Intervention and the United Nations op. cit.

[50] Téson, F Humanitarian Intervention : An Inquiry into Law and Morality op. cit.

[51] Farrokh Jhabvala 'Unilateral Intervention and International Law' *Indian Journal of International Law, A Quarterly* 21(2) 1981 pp 208-230

[52] Damrosch, L. and Scheffer J (eds.) Law and Force in the New International Order (Westview Press, Boulder, Colorado, 1991)

of human rights. This state of affairs was of especial interest to Mahdi[54] who poses the question whether the UN system is simply a 'tool' at the disposal of a select membership. He opines that the UN system has behaved as a tool whenever a major consensus among its membership did no prevail. In other words, the action or inaction would in such situations be attributed to certain states and not the system.

Miller,[55] who carried out a study of internal conflicts during the Cold War era in which the UN intervened, observed that the compromises that marked the organisation's responses were evidence that the UN remained closely tied to the political environment. In other words, the UN, as a reflection of the political world, is limited by this aspect in its response.

In the Post Cold-War period, Gregg investigates the effect of politics on the global organisation in his book, " About Face? The US and the UN".[56] His hypothesis is that after the Gulf War, the UN had at last assumed the role which its founders envisioned for it. However, he believes that congruence between UN prescriptions and US preferences will be crucial if the UN is to play its role in protecting human rights.

Nevertheless, the search for congruence, all in all, makes such leadership less assured and as a consequence, the Security Council's authority to a large extent is watered down. Gregg's book is, to a large extent, more realistic in addressing the current status of the UN with regard to the protection of human rights, than Miller's. The notion propounded by Miller, that the UN is essentially a tool for the great powers is true in this era, but only in cases where a large consensus cannot be attained from its member states.

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[53] Id.

[54] Mahdi, Elmandjra The United Nations System : An Analysis (Faber and Faber, London, 1973)

Indeed, where such consensus is retained, even reluctant members of the Security Council may be pressured into action. The only problem in this case however will be the delays occasioned in prodding them into action. Mahdi, is therefore ahead of his time but precise all the same, in his portrayal of the characteristics of UN actions

The authors all address various aspects of the problem this research is based on. However, they do not answer the question - How is the UN's response to massive and egregious human rights violations to be improved? This is the question the researcher hopes to find an answer to.

THEORETICAL FRAMEWORK

The research shall principally borrow from the Natural Law school of thought in trying to determine what is the place of international human rights law in the high strung political environment of the international system. In other words, this framework assists in establishing to what extent human rights should be protected in the international society.

NATURAL LAW SCHOOL OF THOUGHT.

This school of thought accords primacy to questions of morality. It emphasises that the dignity and natural rights inhere in all human beings by virtue of their humanity.[57] Therefore, the basis of human rights is prior to politics. The absence of consent by a sovereign authority is not necessarily an excuse for non-observance.

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[55] Miller, Linda B. World Order and Local Disorder : The United Nations and Internal Conflicts (Princeton University Press, Princeton, New Jersey, 1967)
[56] Gregg, Robert About Face? The US and the UN op. cit.
[57] Kyan.S. 'Human Rights and the International Community' in Mayall, J.(ed.) The Community of States : A Study of International Political Theory (George Allen and Unwin, London, 1982) pp 78-102:98.

Ideally, the state machinery would use its power to act within the guidelines of natural rights.

The Natural Law contention has been that regimes in place are so shockingly bad by objective moral standards that the only appropriate question for outsiders is whether in the specific circumstances, it is possible to intervene effectively.[58] As such, the particular politics associated with the serious promotion of human rights contributes to the formulation of a movement for global reform in which the central objective is the well being of people rather than the sanctity of juristic persons called states.[59]

Natural law logic remains, however, the underpinning of human rights, validating in the most fundamental way certain minimum standards of behaviour. There is in all societal spheres an active moral force that is sensitive to patterns of abuse deemed contrary to nature: such patterns are perceived as wrong, as justifying resistance, opposition, and even outside financial and military assistance.

HYPOTHESES

- The stronger the political will prevailing amongst UN Security Council members, the greater the chances of intervention on behalf of victims of grave human rights violations.
- The greater the absence of political will amongst UN Security Council members, the less the chances of intervention on behalf of victims of human rights violations.

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[58] See Falk, Richard A., 'Theoretical Foundations of Human Rights' in Richard Pierre-Claude and Burns H. Weston (eds.) Human Rights in the World Community : Issues and Action (University of Pennsylvania Press, Philadelphia, 1989) pp 25-38:34.
[59] Id.

- The UN's reluctance to intervene decisively in Bosnia and Rwanda had much more to do with an absence of political will in the Security Council to provide the necessary resources than any perceived constraints of international law.

METHODOLOGY

The research will use both primary and secondary sources of data.

Primary sources of data will include UN reports and documents relevant to the study.

Secondary sources shall involve texts, journals, periodicals, reports, newspapers, magazines and the internet.

CHAPTER TWO

THE PRINCIPLE OF NON-INTERVENTION AND THE DOCTRINE OF HUMANITARIAN INTERVENTION

Introduction

The principle of non-intervention - the duty of states to refrain from interfering in the affairs of other states - rests uneasily with the international protection of human rights in general, and a right of humanitarian intervention in particular.[1] The debate surrounding humanitarian intervention has mainly been due to a perceived tension between the values of ensuring respect for fundamental human rights and the primacy of the norms of sovereignty and non-intervention which are considered essential factors in the maintenance of international peace and security.[2]

The U.N. Charter's attempt to recognize both the principle of non-intervention and the international importance of human rights reveals the effort by international law to strike a balance between respect for human rights and the right of sovereignty. Article 2(4) of the UN Charter adopts the rule of non-intervention by proscribing the use of force by one member against another: "all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, in any manner inconsistent with the purposes of the United Nations."[3] On its face, Article 2(4) would preclude forcible intervention for humanitarian or other purposes by unilateral means. Article 2(7) has been more controversial, as it relates to the relationship

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[1] Ravi Mahalingam 'The Compatibility of the Principle of Nonintervention with the Right of Humanitarian Intervention' 1 *UCLA Journal of International Law and Foreign Affairs* (1996) pp.221-263:221.

[2] Danish Institute of International Affairs *Humanitarian Intervention: Legal Aspects'* Submitted to the Minister of Foreign Affairs, Denmark, Dec.7, 1999.Also referred to as the Danish Report.

between the U.N. as an organization and an individual member: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter, but the principle shall not prejudice the application of enforcement measures under Chapter VII".[4]

Although Articles 2(4) and 2(7) are clear statements of the non-intervention principle, the Charter also recognizes the importance of human rights. Of particular importance are Article 55(c), which commits the UN to promote universal respect for, and observance of human rights and fundamental freedoms, Article 68, which sets up the Commission on Human Rights, and Article 13, which assigns to the UN General Assembly the task of initiating studies and making recommendations for the realization of human rights and fundamental freedom for all without distinction as to race, sex and language.

These articles represent the recognition that human rights issues have international effects and are no longer matters exclusively within the jurisdiction of states. The U.N. has since used these forums to legitimize its competence to review human rights practices around the world.[5] Further, it has also undertaken a number of collective interventions, through the application of the UN Charter's Chapter VII enforcement mechanism, for the sake of human rights, international peace and security .

Since the end of the Cold War, the Security Council has "availed itself of a right of humanitarian intervention" by adopting a series of resolutions which have progressively expanded the definition of a "threat to international peace and security" under Article 39

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[3] UN Charter Article 2(4).
[4] UN Charter Article 2(7).

of the Charter to allow for Security Council – mandated military intervention to respond to grave humanitarian crises, even where such crises have been purely domestic in nature.[6]

This Chapter examines how contemporary international law, with its emphasis on sovereignty and non-intervention, recognizes humanitarian intervention and to what extent the practice of the UN has legitimized humanitarian intervention under Article 2(7) of the UN Charter. It shall be argued, that while traditional law gave the rule of non-intervention immense prominence, contemporary international law recognizes the limitation of the doctrine. While the principle of non-intervention has not been discarded, it has been diluted, and especially so, with the expansion of international human rights law.

The UN has played a catalytic role in this revolution. It has established its competence to analyze human rights issues, pass resolutions and sanctions, apply moral and diplomatic pressure, and take military action under certain limited circumstances.[7]

Intervention

International law has long imposed limitations on the permissible scope of the internal and external actions of independent sovereign states.[8] The nature of territorial sovereignty necessarily implies the fundamental limitation that no state has the right to impose its will on the territory of another except in certain narrow circumstances such as the protection against the threat or use of force[9], would seem to have emerged as a norm

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[5] See Louis B. Sohn, 'The New International Law: Protection of the Rights of Individuals Rather Than States' *32 American University Law Review* (1982) pp.1-17, p.1.
[6] See Guichard, C 'International Law and the War After Kosovo', *Survival* 41(2) pp 19-34:22-23 and O'Connell, M.E "The UN, NATO and International Law After Kosovo," *Human Rights Quarterly* 22(2000) pp 57-89:68-69.
[7] Ravi Mahalingam, 'The Compatibility of the Principle of Nonintervention with the Right of Humanitarian Intervention' op.cit. p.224
[8] See Tivey, Leonard (ed.)The Nation State (St.Martins Press, New York, 1981).
[9] See Article 51 of the UN Charter

of customary international law, if not *jus cogens*. However, and as shall be shown below, debates as to the precise meaning of art 2(4) of the UN Charter continue.

Vincent defines intervention as 'that activity undertaken by a state, a group within a state, a group of states or an international organization, which interferes coercively in the domestic affairs of another state'.[10] Beloff, describes intervention as 'the attempt by one state to affect the internal structure and external behaviour of other states through various degrees of coercion'.[11] However, Annan is of the view that 'it is important to define intervention as broadly as possible, to include actions along a wide continuum from the most pacific to the most coercive'.[12]

Intervention, defined broadly by Schraeder, is the purposeful and calculated use of political, economic and military instruments by one country to influence the domestic politics or foreign policy of another country.[13]

The situation envisaged by humanitarian intervention is one in which the lives of large numbers of human beings are gravely and immediately threatened. Diplomatic, economic and other non-military means of influencing or coercing the offending state may not only take too long in the circumstances to be effective in saving lives but may actually be ineffective.[14] As a result, the use of force or threat thereof remains conspicuous in the practice of states wherever and whenever humanitarian intervention has been invoked. The

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[10] John Vincent Non-intervention and International Order (Princeton University Press, Princeton, 1974) p.8.
[11] Beloff, R 'Reflections on Intervention' *Journal of International Affairs* (Columbia) Vol. XXII:2, (1968) pp. 172 - 201, p.198
[12] Kofi Annan The Question of Intervention op.cit. p.40
[13] Schraeder, Peter (ed) Intervention in the 1980's: US Foreign Policy in the Third World (Lynne Rienner Publishers, 1989)p.2
[14] Jhabvala, Farrokh 'Unilateral Humanitarian Intervention and International Law' 21(2) *Indian Journal of International Law, A Quarterly* 1981 pp 208-230:209.

application of the use of force by one state in the territory of another state has become basic to the analysis of the subject of humanitarian intervention.[15]

Definition of Humanitarian Intervention

Brownlie describes humanitarian intervention as 'the threat or use of armed force, against a state, or a belligerent community with the object of protecting human rights'.[16] Adelman[17] adopts as his working definition of humanitarian intervention: the use of physical force within the sovereign territory of another state or other states or the United Nations for the purpose of either protection or the provision of emergency aid to the population within that territory.

Stowell[18] also associates humanitarian intervention with the use of force by a state or group of states against a target state in order to protect the citizens of the target state from inhumane or cruel treatment at the hands of the sovereign. Stowell defines humanitarian intervention as the "reliance upon force for the justifiable purpose of protecting the inhabitants of another state from treatment which is so arbitrarily and persistently abusive as to exceed the limits of that authority within which the sovereign is presumed to act with reason and justice".[19]

This definition presumes that humanitarian intervention is not undertaken in contravention of sovereignty. Rather, it is targeted at situations where the limits of

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[15] Fairely, Scott 'State Actors, Humanitarian Intervention and International Law: Reopening Pandora's Box' op. cit. pp 31-32.
[16] Brownlie, I 'Humanitarian Intervention' 9 *Virginia Journal of International Law* (1969) pp 216-228: 217
[17] Adelman, Howard 'Humanitarian Intervention : The Case of the Kurds' 4 (1) *International Journal of Refugee Law* (2000) pp 15-38:18.
[18] Stowell, Ellery C. Intervention in International Law (John Byrne & Co. Washington D.C, 1921) p.51.
[19] Ibid p.53.

sovereignty have been abused. Lillich[20] similarly contends that humanitarian intervention is " a short term use of force by a government in what would otherwise be a violation of the sovereignty of a foreign state".

According to the ruling in the Nicaragua Case, it is 'the element of coercion, which defines and indeed forms the very essence of, prohibited intervention.[21] The use of the term 'prohibited' here suggests that there is such a thing as legitimate intervention.

Unilateral and Collective Intervention

Unilateral Humanitarian Intervention

Military action taken with the authorization of the Security Council by a state or group of states against another state to prevent gross and widespread violations of fundamental rights is referred to as collective intervention. Unilateral Intervention involving the threat or use of force refers to military action taken by a state without the authorization of the Security Council.

There are three schools of thought on the legality of unilateral humanitarian intervention:

The first constitutes the restrictionists, who argue that humanitarian intervention is a violation of territorial integrity and political independence of the state. The second consists of those closer to the natural law tradition, the counter-restrictionists, who argue that such action is permissible under the UN Charter since the UN has made an explicit commitment to the protection of human rights and such use of force falls below any threat to the territorial integrity of the state. The third consists of those who accept humanitarian

[20] Lillich, R (ed.) Humanitarian Intervention and the UN (University of Virginia Press, Charlottsville, 1973) p.53.
[21] ICJ Reports, 1986, p.108)

intervention provided it is conducted in a collective manner that expresses the will of the international community.[22]

Those who argue in favour of the right to unilateral humanitarian intervention maintain that the evolution of international human rights law and the UN Charter have had a revolutionary effect on the international legal system. To them, sovereignty is not an inherent right of states but, rather, derives from individual rights. Therefore, when sovereignty comes into conflict with human rights, the latter must prevail. Téson[23] argues:

> "The human right imperative underlies the concept of state and government and the precepts that are designed to protect them, most prominently, Article 2(4). The rights of states recognized by international law are meaningful only on the assumption that these states minimally observe individual rights."

In the view of the counter-restrictionists, the UN's purpose of promoting and protecting human rights found in article 1(3) has a necessary primacy over the respect for state sovereignty. Force used in defence of fundamental human rights is therefore not a use of force inconsistent with the purposes of the UN.

On the other hand, those who argue against the rights of unilateral humanitarian intervention maintain that Article 2(4) was meant to be a watertight prohibition against the use of force[24] and any customary right of unilateral intervention that may have existed was extinguished by the UN Charter. These writers argue that certain fundamental human rights (which include but are not limited to the right to life; the prohibitions against

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[22] Duke, S."The State and Human Rights: Sovereignty Vs Humanitarian Intervention" XII(2) *International Relations* (1994) pp 25-48:33.

[23] Téson, F. Humanitarian Intervention: An Inquiry into Law and Morality 2nd ed.,(Transnational Publishers Incorporated, Irvington-on-Hudson, New York, 1997) pp 173 – 174.

torture, genocide, and slavery and the principle of non-discrimination) are obligations *erga omnes*, that is, obligations every state is bound to observe vis-à-vis all other states. However, although each state has the right to take action to ensure respect for these fundamental rights, this does not entail a right to use force[25] without Security Council authorization for such a purpose. It is argued that "any time that conflict or tension arises between two or more of these values, peace must always constitute the ultimate and prevailing factor".[26] Further, that while respect for human rights is considered important to a just international legal order, neither the Charter, current state practice, nor scholarly opinion conclusively supports the view that there is a right of unilateral humanitarian intervention.[27]

The main thrust of their argument is that unilateral humanitarian intervention is prohibited; that the reason why we have a rule of non-intervention is "because unilateral intervention threatens the harmony and concord of the security of sovereign states"[28] and that the purported good that might come from allowing countries to intervene unilaterally is outweighed by the dangers that arise from weakening the international restraints on the use of force.

Their skepticism of the doctrine is fed by the history of humanitarian intervention, which developed during 'an era of western hegemony' over 'infidel' or 'uncivilised'

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[24] Simma Bruno 'NATO, the UN and the Use of Force : Legal Aspects' 10 *The European Journal of International Law* 1999, pp 1-22: 2- 3; Murphy Sean D. Humanitarian Intervention : The UN in an Evolving World Order (University of Pennsylvania Press, Philadelphia, 1996) pp. 71 – 75.

[25] Cassese, A. " *Ex iniura ius oritur:* Are we Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community? *The European Journal of International Law* 10, pp.23-30:26.

[26] Ibid p.24.

[27] Murphy, Sean D. . Humanitarian Intervention : The UN in an Evolving World Order op. cit. p.356.

[28] Roberts, Adam Humanitarian Action in War Adelphi Paper 305 (Oxford University Press, London, 1996) p. 26.

states;[29] by the fact that it has so frequently been abused and by the circumstance that it can only be resorted to by powerful against weak states.[30]

Nevertheless, while UN action remains everyone's goal, the real issue according to Lillich is whether, absent such action in serious human rights deprivation cases, states today must sit by and do nothing merely because Article 2(4) of the UN Charter was intended to preclude unilateral humanitarian interventions.[31] He argues that to the extent that states consciously relinquished the right to use forcible self-help, they took such action under the assumption that the collective implementation measures envisaged by Chapter VII soon would be available. Even staunch supporters of the collective approach, such as Judge Jessup, admitted that unilateral humanitarian interventions might be permissible if the UN lacked the capacity to act speedily. He states,

> "It would seem that the only possible argument against the substitution of collective measures under the Security Council for individual measures by a single state would be the inability of the international organization to act with the speed requisite to preserve life".[32]

Indeed, the UN has its share of political institutional obstacles. A combination of the failure to establish a permanent international military force and the existence of the veto power, records Friedmann, has "effectively destroyed the power of the UN to act as an organ of enforcement of international law against a potential law-breaker.[33]

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[29] Franck, Thomas and Rodley Nigel ' After Bangladesh: The Law of Humanitarian Intervention by Military Force' op.cit. p.279.
[30] Ibid.p.304
[31] Lillich, R 'Humanitarian Intervention : A Reply to Ian Brownlie and A Plea for Constructive Alternatives' in Moore, Norton (ed.) Law and Civil War in the Modern World (John Hopkins University Press, Baltimore & London, 1974) p.238.
[32] Jessup, P. A Modern Law of Nations 170(1949) quoted in Lillich, R 'Humanitarian Intervention : A Reply to Ian Brownlie and A Plea for Constructive Alternatives' op.cit. p.238.
[33] Friedmann, "General Course in Public International Law," (!969 – II)127 *Recueil Des Cours* pp 39 – 72: 68-69.

If, as Falk has remarked, "the renunciation of intervention does not substitute a policy of non-intervention but involves the development of some form of collective intervention",[34] then concomitantly, the failure to develop effective international machinery to facilitate humanitarian interventions arguably permits a state to intervene unilaterally in appropriate situations.

Ronning observed that, "it is useless to outlaw intervention without providing a satisfactory substitute as it was to outlaw war when no satisfactory substitute was available."[35] He posed the question

> 'whether refusal to compromise on the principle of absolute non-intervention will not threaten the very principle itself. It can of course continue to be honored in countless declarations and protests, but if it does not square with the hard facts of international politics, that will be the extent of its honor'.

To a large extent, Ronning points at the widening gap between the 'absolute non-intervention' approach to the Charter and the actual practice of states. Accordingly, Lillich suggests that the task for international law is therefore 'to clarify the various criteria by which the legitimacy of a state's use of forcible self-help in human rights situations can be judged.[36]

Similarly, Sohn[37] challenges those who advocate that the doctrine of humanitarian intervention flies in the face of the accepted consensus of the international community. He states that they offer no more than an acrid textualistic approach to existing international

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[34] Falk, quoted in Lillich R. 'Humanitarian Intervention: A Reply to Brownlie and a Search for Constructive Alternatives' op. cit. p. 247. ff 116.
[35] Ronning, C. Law and politics in Inter-American Diplomacy 83(1963) quoted by Lillich R. 'Humanitarian Intervention: A Reply to Brownlie and a Search for Constructive Alternatives' op. cit.p.239.
[36] Lillich, R 'Intervention to Protect Human Rights' 15 *McGill Law Journal* (1969) pp.205-220:218.
[37] Sohn, Louis 'The Shaping of International Law' 8 *Georgia Journal of International and Comparative Law* (1978) pp.1-20: 16.

law, without appreciating the need to adapt the law, if necessary by fashioning exceptions to rules – in order to respond to the perceived and strongly felt needs of the international community.

Several suggestions have been made in this regard. One proposed strategy for promoting this evolution entails proferring the principle of unilateral humanitarian intervention for adoption by the international community as international law. This would be in the form of an international convention or a UN General Assembly resolution or both. Either forum would not be dispositive on the matter but could act as evidence of, and lay the groundwork for, international recognition of a right to humanitarian intervention when the UN Security Council is unable or unwilling to act.[38]

The right would have to be restricted to the most egregious violations of human rights, such as genocide and violent mass ethnic expulsions. International legitimation, through articulated principles of international law, would therefore serve to distinguish between aggression and humanitarian intervention, and provide comprehensible standards of behaviour, thereby enhancing predictability and stability.[39] It is admitted that though 'nobody wants to amend the rules in a formal way, they can be stretched. Indeed, only the building of the widest possible international consensus, in the framework of the UN, could in principle or reality prevent this danger'.[40]

Another suggestion is submitted by Fonteyne who argues that a clear rule which confines the legality of humanitarian intervention to certain well-circumscribed situations

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[38] Shotwell, B and Thachuk, K 'Humanitarian Intervention: The Case for Legitimacy' *Strategic Forum* No.. 166, July 1999.
[39] Ibid.
[40] Hippler, Jochen '*Humanitarian Interventionism? The UN and the Slow Death of Humanitarian Interventionism*' at www.isj1text.fsnet.co.uk/pubs/isj85/baxter.

may be a better alternative than a principal prohibition which could be circumvented under exceptional but undefined circumstances. He suggests that the UN Charter be amended to incorporate a provision on humanitarian intervention as a third exception to the ban on unauthorized force next to Article 51 of the UN Charter.[41]

Verwey[42] however, is skeptical about the adaptation of written international law to claims that are – and have proven to be – too susceptible to abuse, as they might contribute to, rather than prevent, further violations. In his view, the legalization of force 'even for genuinely humanitarian purposes, may heighten expectations of violence within the international system and concomitantly erode the psychological constraints on the use of force for other purposes. As a word of caution, however, he points out that if international law, at the present stage of development and effectiveness of international organization, does not provide room for genuinely unselfish, morally obligatory, last resort humanitarian intervention, then it would lose control of and become irrelevant in some of the most dramatic situations; dramatic in a humanitarian sense, but also in terms of peace and security.

He opts for a less controversial and less risky thesis: a thesis starting from the consideration that first, not the vital interests of states but those of humanity are at stake, and second, that the protection of these interests by means of unilateral resort to force should take place only in very exceptional cases of emergency. He bases his thesis on "the principle of necessity", a basic principle of law, the validity of which is generally

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[41] Fonteyne, I. 'The Customary International Law doctrine of Humanitarian Intervention : Its current validity under the UN Charter' 4 *California West International Law Journal* (1974) pp 229 –258: 249-250.

[42] Verwey, W.D 'Humanitarian Intervention'in Cassese, Antonio(ed.) The Current Legal Regulation of the Use of Force (Martinus Nijhoff Publishers, Dordrecht, Boston, Lancaster, 1986) pp 57-79:152

recognized. He asserts that the principle of necessity should not be invoked and humanitarian intervention should not be resorted to, unless a number of conditions are fulfilled which relevant UN organs could apply as an informal quasi-legality standard.[43]

Verwey's suggestion recognizes situations where the Security Council is unable or unwilling to use force to prevent or stop grave and widespread violations of human rights. In his view, individual states or a group of states may need formal criteria to intervene without the UN Security Council's authorization in order to save lives. His referral to the 'relevant UN organ' implies that the General Assembly could serve as a legitimator of unilateral humanitarian intervention in such circumstances.

Nonetheless, it has been postulated that it may not be feasible to expect to achieve anything like a principled response at the international level in the foreseeable future, at least where the issue concerns military intervention to enforce international law. It may be inevitable, possibly even preferable, for responses to international crises to unfold selectively, when those who have the capability to respond also have motivations for undertaking the burdens of intervention.[44]

O'Connell[45] contends that with no right of humanitarian intervention or defenses in support of the practice, the only option available to states that have used force in violation of the rules, is to admit the violation and hope that the jury of public opinion will take into consideration any mitigating circumstances. Groom and Taylor affirm that agreement in advance on general rules governing when intervention could take place, would be very

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[43] Ibid

[44] At http//www.unu.edu/p&g/Kosovo

[45] O'Connell, M.E 'The UN, NATO and International Law After Kosovo' 22(1)*Human Rights Quarterly* pp. 57-89:68

difficult even in cases of gross violations of basic standards. In their view, a code of rules governing unilateral intervention would be likely, in the early 21st century to limit, rather than help, effective and responsible action on the part of the international community. Nonetheless, the creation of humanitarian intervention norms in the medium and long-term would be a practical goal.[46]

Lobel and Ratner[47] also concede that recognizing, in rare instances, that a state may need to intervene in certain cases of genocide, would be a less dangerous alternative than permitting an "escape clause" on the prohibition of the unilateral use of force. They submit that such an exception would be likely to be widely and dangerously abused.

While states are not comfortable with the idea of codifying objective criteria for unilateral humanitarian interventions, they have also exhibited a weak appreciation for the development of such rules with regard to collective humanitarian interventions. Mayall propounds that the most positive development for the time being is that the Security Council resolutions are based on a growing consensus about coded messages in the form of wording such as "all necessary measures". This is because some states will only agree to action if the form of words do not appear to be strengthening a norm of intervention and creating a precedent.[48]

Collective Humanitarian Intervention

[46] Groom and Taylor in Mayall, J 'Humanitarian Intervention' at http//www.brook.edu/fp/projects/intervention.htm.
[47] Lobel, J and Ratner, M 'Humanitarian Military Intervention' 5(1) *Foreign Policy,* January 2000, at http//www.foreignpolicy_infocus.org/form_feedback.html
[48] Mayall, J 'Humanitarian Intervention' at op.cit.

Bull, a modern realist, advises that collective intervention, may have legitimacy where unilateral intervention does not.[49] He further notes that Christian Wolff, a positivist philosopher who expounded an absolute right of non-intervention, even suggested that collective intervention may be justified when authorized by the international community itself.[50] Lillich also maintains that 'the fact that more than one state has participated in the decision to intervene for humanitarian reasons lessens the choice that the doctrine will be invoked exclusively for reasons of self-interest.[51] Indeed, history reveals ambivalence and tension about the legitimacy of unilateral intervention, but general support for collective intervention.

In the UN, collective intervention seems to have become a legitimate method for coping with widespread domestic chaos that promise to jeopardize international peace and security. Adelman contends that by Article 2(4) of the UN Charter, all member states have pledged themselves to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any manner inconsistent with the purposes of the UN. This excludes any recourse to humanitarian intervention by any state or combination of states apart from the UN itself.[52]

Rajan[53] also propounds that the collective action of an international organization with respect to a state or group of states, or states generally, is characteristically and altogether different from the unilateral intervention of a state (or a group of states) in

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[49] Hedley Bull, Conclusion, in Hedley Bull, ed., Intervention in World Politics (Martinus Nijhoff, Dordrecht,1984) p.195.
[50] Ibid
[51] Richard B. Lillich 'Forcible Self-Help by States to Protect Human Rights' *Iowa Law Review*, Vol.53, 1967-168, pp.325-351: 333.
[52] Adelman, Howard 'Humanitarian Intervention : The Case of the Kurds' op.cit. p.25.
[53] Rajan, M.S. The Expanding Jurisdiction of the United Nations (Oceana Publications, Inc. New York, 1982) p.9.

another state. And when the collective action of international organization is mooted by a sovereign member state (or states) and is taken by the organization in the interests of all or many member states, (not in the interests of a great power or a group of states) 'it does seem that we are dealing with two different situations, with different motivations and different consequences'.[54]

He goes a step further to suggest that 'collective concern and action by the most representative organ of the international community is far better for individual states, as well as the community of states - better that is, for the "sovereign equality" and protection of the domestic jurisdiction of the small, weak states, and for stability and order of the international community.[55] Sohn, concedes that the UN is a source of world opinion and a deliberative body which formulates positions and policies on a level which is a product of political bargaining and consensus building. It therefore represents a degree of international legitimacy which individual states do not possess.[56]

The Place of Multilateral Intervention within Article 2(7)

It has been postulated that non-intervention is the rule by which states should conduct themselves, but intervention is the exception.[57] Non-intervention then, is a restriction or limitation on intervention; and actually the interest in non-intervention arises

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[54] Ibid

[55] Rajan, M.S. The Expanding Jurisdiction of the United Nations op. cit. p211.
See also, Louis B. Sohn, ['The New International Law : Protection of the Rights of Individuals Rather Than States' *American University Law Review* 1(1982) pp 1 - 20, pp.13 - 17.] who states that the UN is a source of world opinion and a deliberative body which formulates positions and policies on a level which is a product of political bargaining and consensus building. it therefore represents a degree of international legitimacy which individual states do not possess.

[56] Louis B. Sohn, 'The New International Law : Protection of the Rights of Individuals Rather Than States' *American University Law Review* 1(1982) pp 1 - 20, pp.13 - 17.

[57] Thomas A. and Thomas A. Non-intervention: The Law and its Import in the Americas 67(1956) quoted in Fairley, Scott H. 'State Actors, Humanitarian Intervention and International Law: Reopening Pandora's Box' 10(1) 1980 *Georgia Journal of International and Comparative Law* pp 29-65, p 30.

from or has as its source those interventions which are carried on by states against other states in practice, and which either openly violate the rule of non-intervention or, according to some publicists, are legal or justifiable interventions – hence exceptions to the rule of non-intervention.[58]

Hence, the starting point for an analysis of intervention by states in the affairs of other states is an appreciation of the doctrine of non-intervention, a notion basic to the fundamental principle of the sovereign equality of states. The rule of non-intervention can be said to derive from and require respect for the principle of sovereignty.[59]

It therefore appears that the doctrine of non-intervention and the notion of state sovereignty are but two branches of the same tree. Under contemporary international law, it may be said that this doctrine is an integral part of the principle of domestic jurisdiction contained in Article 2(7).

While the Charter of the UN gives great responsibilities to great powers, in their capacity as permanent members of the Security Council, it safeguards against the abuse of those powers through Article 2(7), which protects national sovereignty even from intervention by the UN itself.[60]

Adelman, while conceding that how a state treats 'its own individual citizens and minorities affects the viability of every other state', urges the need for a cautious view of humanitarian intervention. He asserts that the right to intervention should be very

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[58] Ibid

[59] H.Scott Fairley 'State Actors, Humanitarian Intervention and International Law : Reopening Pandora's Box' *Georgia Journal of International and Comparative Law* Vol 10:1 (1980) pp 29-65: 30.

[60] Kofi Annan The Question of Intervention (UN, Dept. of Public Information, New York, 1999) p.4.

restricted and only recognized in cases where the state both fails to protect its own citizens and that failure jeopardizes the peace and security of other states.[61]

The Charter of the UN clearly assigns responsibility to the Security Council for maintaining international peace and security. Therefore, only the Council has the authority to decide that the internal situation in any state is so grave as to justify forceful intervention.[62] Hence, the right to intervene should be authorized or supported by the Security Council. Such a rule ensures that any action taken is in harmony with the UN Charter.[63]

On the other hand, the Security Council's right to intervene or to authorize intervention by a group of states or a regional organization in a target state to protect the latter's citizens from widespread deprivations of internationally recognized human rights, is now generally recognized in international law. It may be stated that this amounts to the only legitimate intervention.

The limits of collective humanitarian intervention

A closer examination of Article 2(7) is necessary in order to establish firstly, the limits of the Security Council's competence to authorize multilateral intervention and whether humanitarian intervention is legally admissible under this provision. The limits of 'domestic jurisdiction' as far as human rights matters are concerned, will also be investigated.

Whether humanitarian intervention is permissible under Article 2(7)

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[61] Adelman, 'Humanitarian Intervention : The Case of the Kurds' op. cit. p.28.
[62] Annan, The Question of Intervention op. cit. p.11.
[63] Inocencio Arias 'Humanitarian Intervention : Could the Security Council kill the UN? op.cit. p.1010.

Article 2(7) prohibits the UN from intervening in matters 'which are essentially within the domestic jurisdiction of any state'. Some have asserted that the literal meaning of Article 2(7), 'essentially within the domestic jurisdiction of states' precludes intervention on behalf of human rights or for any other purpose.[64] Nonetheless, and as Chapter Three will argue, the UN has manifestly established its competence to review any state's human rights practices and to criticize those practices. Furthermore, the UN has passed resolutions, undertaken relief missions, approved and monitored sanctions, and designated certain acts that violate human rights as international crimes. UN practice of active involvement in human rights issues has narrowed the literal scope of Article 2(7).[65]

Most human rights matters are no longer viewed by most states as essentially within domestic jurisdiction. If the Security Council decides that international peace and security is threatened, even UN 'intervention' in the sense of forcible or coercive action can be taken to rectify human rights violations.[66] As a result, the Security Council has authorized direct protection of persons such as the Kurds in Iraq or millions of civilians in southern Somalia, in the name of the international community.[67]

The UN has accomplished this transition through the application of the Charter's Chapter VII legal mechanism, which allows the UN to define either human rights concerns or crises as threats to international peace and security.[68] International peace and security has been interpreted to mean a lot more than the security of states within the international

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[64] Goronwy Jones The UN and the Domestic Jurisdiction of States op. cit. pp 37-40.
[65] Ravi Mahalingam, 'The Compatibility of the Principle of Nonintervention with the Right of Humanitarian Intervention' p.246.
[66] Thomas G.Weiss, David P.Forsythe, Roger A.Coate The UN and Changing World Politics (Westview Press, Boulder, 1994)p.112
[67] Thomas G.Weiss, David P.Forsythe, Roger A.Coate The UN and Changing World Politics ,p.129.
[68] See Jost Delbrück 'A Fresh Look at Humanitarian Intervention Under the Authority of the UN

system. For Forsythe, 'security, as it appears in the UN Charter, is as much about the protection of individuals as it is about the defense of the territorial integrity of states'.[69]

As long as the Security Council links human rights to security issues, it has a broad mandate to act under Chapter VII. This does not necessarily mean that human rights are subordinate to security issues on the UN agenda.

Indeed, action by the Security Council under Chapter VII shows the significant concern for human rights expressed through the United Nations. During the Cold War, for example, the Security Council voted a mandatory arms embargo on the Republic of South Africa. While human rights were not explicitly mentioned, only "the situation in South Africa" was. However, the basic issues of concern to the international community were apartheid, the denial of a people's right to self-determination, and majority rule - all defined as human rights issues in international law.[70]

After the end of the Cold War, the Security Council expanded the use of Chapter VII in relation to human rights. In the spring of 1991, after the Persian Gulf War, the Council declared that the human rights situation in Iraq, especially pertaining to the Iraqi Kurds, constituted a threat to international peace and security. Iraqi Kurds were fleeing into both Iran and Turkey to escape repression. This was the first declaration by the Council that violating human rights created a security threat.[71]

In 1992, the Security Council authorized 'all necessary means' to create 'a secure environment' for the delivery of humanitarian relief in Somalia. While there was not much

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67 *Indiana Law Journal (1992)* pp 887-902, p897 and Frederic L.Kirgis, Jr, 'The UN at Fifty: The Security Council's First Fifty Years' *89 American Journal of International Law (1995)* pp.506-580,p572.
[69] David P.Forsythe The Politics of International Law : US Foreign Policy Reconsidered (Lynne Rienner Publishers, 1990) p.162.
[70] Thomas G.Weiss et.al The UN and Changing World Politics op.cit. pp.126 -127.

risk of international violence, or even much international disruption outside the country, the Council still invoked Chapter VII. This has led some observers to conclude that the Security Council was developing, after 1990 and especially in Somalia, a doctrine of humanitarian intervention apart from issues of international peace and security.[72]

Formally, however, the Council did not assert a right of humanitarian intervention *per se* but rather, a right to respond to situations that it said threatened international peace and security. To the extent that the international community has not criticized or opposed the Security Council's conduct, the examples of expanded Chapter VII authorization should be viewed as lawful modifications of a treaty through practice. The Vienna Convention on the Law of Treaties provides that the interpretation of a treaty may be influenced by practice[73] or, to the extent the examples go beyond interpretation to actually modifying or adding to the existing text, something closer to the development of customary law may be occurring.[74]

While genocide and mass repression involving flagrant violations of human rights can bring international condemnation and calls for forcible intervention, interventionary action for human rights has increasingly been undertaken and justified on security basis.

The UN Charter views protection of human rights as necessary for international peace and the association between human rights and international peace and security is not

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[71] *Ibid*

[72] Fernando R.Teson 'Changing Perceptions of Domestic Jurisdiction and Intervention' in Tom J. Farer, ed., Sovereignty and Democracy, forthcoming ,quoted in Thomas G.Weiss, David P.Forsythe, Roger A.Coate The UN and Changing World Politics p129.

[73] See Vienna Convention on the Law of Treaties 23 May 1969, art 31(3)(b) U.N. Doc. A /CONF. 39/27 (1969) 1/55 U.N.T.S. 331

[74] O'Connel, M.E. 'The UN, NATO and International Law After Kosovo' *Human Rights Quarterly* Vol.22(1) pp 57-89:58.

a new reinterpretation of Article 2(7) by the UN Security Council, in order to justify intervention. Indeed, Article 55 of the UN Charter reads:

> With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the UN shall promote...
>
> c. universal respect for, and observance of, human rights and fundamental freedoms for all.

Hence, according to the UN Charter, violation of human rights is seen as a source of international conflict; protection of human rights would eliminate a source of international instability.

The limits of domestic jurisdiction under Article 2(7)

The issue here is whether one can objectively determine where the limits of domestic jurisdiction end and those of international jurisdiction begin. Further, whether these limits are absolute where massive human rights violations are concerned; considering, as has been argued, that such atrocities pose a threat to international peace and security and that the Security Council in such cases, needs no excuse to intervene.

The purpose of Article 2(7) was to confine interventions to cases where the international peace is threatened or breached, and to keep the UN from interfering in purely domestic disputes. This old orthodoxy would require the UN to let a conflict, within the borders of single state, 'rage', 'fester' or 'burn itself out', at least to the point when its effects begin to spill over into neighbouring states so that it becomes, in the words of so many Security Council resolutions, "a threat to international peace and security".[75]

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[75] Kofi Annan The Question of Intervention op. cit. p. 5 - 6.

Yet, one of the great complexities facing the UN today is that although the Charter was written for states and by states, much political instability and violence arise today either from violence within states or from violence across state boundaries by non-state parties.[76] The UN Charter was designed to prevent reoccurrences of World War II which was characterized by the invasion of one state by another. The UN is ill-equipped to deal with conflicts existing within domestic jurisdiction. Improving its capabilities in this area requires changes in the approach to sovereignty. As a result, state sovereignty, in its most basic sense, is being redefined by globalization and international cooperation.[77] In McCorquodale's view, 'the process of globalization is part of an "ever more interdependent world",[78] where political, economic, social and cultural relationships are not restricted to territorial boundaries or to state actors and no state or entity is unaffected by activities outside its direct control.[79]

Essentially, this entails the necessity for the UN to adopt its rules to this ever dynamic international system, if it to maintain its effectiveness. The Permanent Court of International Justice (PCIJ) pointed out in 1923 that what is international and what is domestic changes with the changing nature of international relations.[80] Recent trends in UN practice have shown that the Security Council is increasingly being guided by emerging norms in its interpretation of domestic jurisdiction and that as a result, the UN has legitimized humanitarian intervention in a number of situations. The UN supported

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[77] Kofi Annan The Question of Intervention op. cit.p.37.
[78] Boutros –Boutros Ghali : An Agenda For Peace : Preventive Diplomacy, Peace Making and Peace Keeping UN GAOR, 47th Sess., 17, UN Doc. A/47/277-5124111 (1992).
[79] Robert McCorquodale with Richard Fairbrother 'Globalization and Human Rights' *Human Rights Quarterly*; Vol. 21(3) 1999, pp.735-750: 735.
[80] Nationality Decrees in Tunis and Morocco, 1923 PCIJ, Series B, no.4, International Court of Justice Report, p.143.

interventions have occurred where the breakdown of sovereign authority, and even where the UN has determined that a functioning sovereign has violated the rights of those within its boundaries to an intolerable extent.[81] Such a trend was noted by Annan when he asserted that,

> "Emerging slowly, but I believe surely, is an international norm against the violent repression of minorities that will and must take precedence over concerns of state sovereignty. No government has the right to hide behind national sovereignty in order to violate the human rights or fundamental freedoms of its people".[82]

Former UN Secretary General, Boutros-Boutros Ghali, while acknowledging this change in the way the international community viewed the nature of state sovereignty stated that :

> 'the time of absolute and exclusive sovereignty has passed; its theory was never matched by reality. It is the task of leaders of states today to understand this and to find a balance between the needs of good internal governance and the requirements of an ever more interdependent world'.[83]

Similarly, in his last annual report in the autumn of 1991, the outgoing UN Secretary General, Javier Pérez de Cueller, having found a new context for humanitarian intervention by the UN wrote :

> It is now increasingly felt that the principle of non-interference within the essential domestic jurisdiction of states cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity. The fact that in diverse situations the UN has not been able to prevent atrocities cannot be accepted as an argument, legal or

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[81] Ravi Mahalingam, 'The Compatibility of the Principle of Nonintervention with the Right of Humanitarian Intervention' p.225

[82] UN Secretary General Kofi Annan, Address before the Commission on Human Rights in Geneva, Switzerland (Apr.8, 1999) quoted by Inocencio Arias 'Humanitarian Intervention: Could the Security Council kill the UN? *Fordham International Law Journal* Vol. 23: pp.1005-1028, p.1007.

[83] Boutros Boutros-Ghali An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992 (UN, New York, 1992) p.9.

moral, against the necessary corrective action, especially when peace is threatened.[84]

In a sense, this emerging position has been well accommodated by Article 2(7). It would seem that the UN was expected to exercise wide (and even expanding) jurisdiction vis-à-vis the traditional scope of the domestic jurisdiction of member states. This position was affirmed by John Foster Dulles on behalf of the Sponsoring Powers at the San Francisco Conference, when he stated that "future generations will thank us for what we do in adopting simple phrases and allowing them to evolve as the state of the world, and the factual interdependence of the world, makes it necessary and appropriate that it should evolve".[85]

Hence, Article 2(7) has evolved, not only with the growing realization that international peace and security and the protection of human rights are interdependent purposes of the UN, but also with the growth of a stronger international commitment to the protection of human rights and the continuing emergence of a truly global community. The precise boundaries of state sovereignty and domestic jurisdiction are therefore increasingly elusive. If sovereignty means that a national government sets policy in its domestic jurisdiction, evolving international standards suggest that this remains true only as long as the national government adheres to international law. Saddam Hussein's government sets policy in Iraq only as long as it does not engage in gross violations of internationally recognized human rights. When it engages in gross human rights violations,

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[84] UN Doc.A/46/1 quoted in Oliver Ramsbotham and Tom Woodhouse Humanitarian Intervention in Contemporary Conflict, A Reconceptualization p.84

[85] Documents of the UN Conference on International Organization, San Francisco, 1945 (London/New York), vol.13, pp.390-1.

it must tolerate UN protection of some threatened groups on Iraqi soil - for example, the Iraqi Kurds.[86]

Adelman affirms that,

> the sovereignty of a state merely protects that state from intervention by another state. But that state is a member of the community of nations and has responsibilities, including responsibilities to its own citizens, which it is obligated to carry out. When that state fails, when it abuses that obligation, a transnational body has a duty to provide protection and, hence, the right to intervene.[87]

Conclusion

The norm of non-intervention has acquired legal and moral limits through an historical process. Human rights are no longer regarded as matters essentially within the domestic jurisdiction of a state but are the concern of the international community as a whole, while respect for the customary law rule of non-intervention is conditional upon a state ensuring the well-being of its people.[88]

A new norm is emerging that views legitimacy of the sovereign as derived from the people; sovereignty, therefore, is forfeited by the most egregious violations of the fundamental rights of people, such as genocide.

Not only does International law recognize with little reservation that human rights is an international issue, but it also that it may be a legitimate basis for intervention. The interventions in Somalia, Rwanda, Iraq and Bosnia reveal this recognition. As the 20th century has progressed, the duty of each state to observe a basic respect for human rights, and to refrain from violating them in a manner which "shocks the conscience of mankind"

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[86] Thomas G.Weiss, David P.Forsythe, Roger A.Coate The UN and Changing World Politics op. cit.p. 32
[87] Adelman, 'Humanitarian Intervention : The Case of the Kurds' op. cit. p.35
[88] Mary Griffin 'Ending the impunity of perpetrators of human rights atrocities : A major challenge for international law in the 21st century' http://www.icrc.org/icrceng.nsf/4d...

or poses a "threat to peace and security" has become a litmus test for the continued respect of sovereignty and the principle of non-intervention.[89]

Therefore, the 'conflict' between the defence of human rights through humanitarian intervention and considerations of international peace and sovereignty, threatened by such intervention, appears to be more apparent than real. Under Article 2(7), the UN is competent to undertake humanitarian intervention, through the authorization of the Security Council. Both practice and the law (Charter) of the UN, are in harmony as far as this issue is concerned.

[89] Mahalingam R. 'The Compatibility of the Principle of Non-intervention with the Right of Humanitarian Intervention' op. cit. p. 263

CHAPTER 3

THE UN HUMAN RIGHTS MECHANISMS

Introduction

This chapter examines the international human rights regime. The growth in the status of human rights, with special focus given to the 1948-2000 period and the role of the UN in it, will be investigated in the first part. The second part will look into the UN mechanisms for promotion, protection and enforcement of human rights. It will also address the role of humanitarian intervention in this framework of UN human rights mechanisms.

The growth in the status of human rights (1948-2000)

Human rights occupy an important position in international affairs. This is especially evident in the UN. The UN Charter, the UN's constitution, not only portrays the aspirations of the international community as they were during the immediate post Second World War era, but also continues to guide it into the 21st Century.

One of the most revolutionary innovations of the UN Charter and what distinguishes it most sharply from any previous international constitution is its attitude towards human rights.[1]

What is new about the old subject of human rights is its emergence as part of international relations. At one time, however, it was thought by most intellectuals grappling with the subject of personal rights that they were articulating rights possessed by all humans everywhere. Even when allowing for the biases of the times pertaining to

[1] Humprey, G 'Human Rights : The UN and 1968' *Journal of the International Commission of Jurists* (June, 1968) p.119.

gender, race, and class, the central argument about human rights was, at a minimum, that all men *of a certain race and class* (emphasis mine) possessed inalienable rights, although most philosophers did not put the argument in such crass terms. These intellectual points notwithstanding, the political practice was that human rights were a matter for the state. From roughly 1648 and the Peace of Westphalia endorsing supreme territorial authority, to 1945 and the UN era, human rights were regarded as mostly within the competence of the state. Therefore, most of the international action for human rights prior to 1945 did not intrude on the state's authority within its territorial jurisdiction in any significant way.[2]

Some pre-1945 attempts at international action on behalf of human rights represented small exceptions to the basic principle that human rights was normally a domestic affair of states. The international law on alien rights pertained to a relatively small fraction of persons and provided no means of implementation beyond states bargaining over rules.[3]

The international law of armed conflict pertained to a situation already internationalized by the fact of international war (this law did not cover internal armed conflict until 1949) and did not provide even partial means of supervision until 1949. The minority treaties were not generalized but pertained only to those states either defeated in World War I or emergent from defeated empires (other minorities were completely unprotected even in legal theory). The minority treaties did at least contain some

[2] Forsythe, D. The Internationalization of Human Rights (Lexington Books, Lexington, 1991) p.16
[3] See further, Lillich Richard, The Human Rights of Aliens in Contemporary International Law (Manchester University Press, Manchester, 1984).

monitoring mechanisms and did provide experience with the idea of private complaints.[4] The treaties banning slavery, the slave trade and slave like practices did not provide for centers of authority that could contest state policy. Indeed, the international instruments against slavery provided no special means of implementation, save for the concept of universal jurisdiction for states. This leaves international action against labor abuses as the sole example of creation of international authority of broad scope to contest state policy within its territorial jurisdiction.[5]

Internationalization of Human Rights

The horror of the Second World War, and the consequent awareness of the close connection between respect for human dignity and peace, motivated the UN Charter's qualitative leap towards the promotion of human rights for all The holocaust demonstrated that inter-war efforts at international constraints on domestic practices had failed dismally. The UN Charter signed in San Francisco in 1945, is among the first international treaties expressly based on universal respect for human rights.

The significant point about the benchmark year of 1945 is that the UN Charter represented a broad foundational stepping stone leading to the cumulative internationalization of human rights.

After ratification of the Charter came the passage, by the UN General Assembly, of the Universal Declaration of Human Rights. The authors of the Declaration, from different regions of the world, sought to ensure that the draft text would reflect these different cultural traditions and incorporate common values inherent in the world's

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[4] See Inis L.Claude, Jr., National Minorities : An International Problem (Harvard University Press, Cambridge, 1955) See further, Vernon van Dyke, Human Rights, Ethnicity and Discrimination (Greenwood Press, Westport, Conn., 1985).

[5] Forsythe,D. The Internationalization of Human Rights (Lexington Books, Lexington, 1991) p.16

principal legal systems and religious and philosophical traditions. This endeavor was successful as is demonstrated by the virtual universal acceptance of the Declaration.

The Universal Declaration of Human Rights ushered in a new era of international commitment to human freedom: It emphasizes the universality of rights; recognizes the realization of human rights as a collective goal of humanity; Identifies a comprehensive range of all rights – civil, political, economic, social and cultural – for all people; Creates an international system for promoting the realization of human rights with institutions to set standards, establish international laws and monitor performance (but without powers of enforcement); establishes the state's accountability for its human rights obligations and commitments under international law.[6]

Once the Universal Declaration of Human Rights was adopted, the Commission on Human Rights – an intergovernmental policy making body concerned with human rights issues - set out to translate its principles into international treaties that protected specific rights. Given the unprecedented nature of the task, the General Assembly decided to draft two Covenants codifying the two sets of rights outlined in the Universal Declaration: Civil and Political Rights and Economic, Social and Cultural Rights.

Originally, it was questioned whether there should be one or two covenants. This question was closely linked to the question of monitoring. In general, civil and political rights were considered to be within the realm of positive law. Hence, the best way to protect such rights appeared to be to establish a fact-finding body. Economic, social and cultural rights, on the other hand, were viewed rather as practical objectives, more suited to monitoring on the basis of periodic reports. Given the existence of the two major

[6] Human Development Report 2000(Oxford University press, Oxford, 2000) p.2.

categories of rights, which called for different monitoring arrangements, it seemed logical and convenient to draft to separate covenants.[7]

In its resolution 543 (VI) of 5 February 1952, the General Assembly opted for two covenants. They were to be approved and opened for signature simultaneously in order to emphasize the unity of the aim. Further, they were to include as many similar provisions as possible.[8]

As the foundation of international human rights law, the Universal Declaration has also inspired more than 60 international human rights instruments which together constitute a comprehensive system of binding treaties for the promotion and protection of human rights.[9]

In 1966, the UN General Assembly adopted the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.[10] When they entered into force in 1976, the two covenants made many of the provisions of the Universal Declaration effectively binding on states that ratified them.

The legislative history of these instruments was complex and relatively long. The covenants, while substantially completed by 1954, were not approved by the General Assembly and opened for signature until 1966 and did not reach the number of adherences required for entry into legal force until 1976. Most states were not anxious to accept specific and binding obligations concerning international human rights and they did not want the UN Commission on Human Rights or other organs of the UN system to

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[7] The UN and Human Rights (UN Bluebooks series, New York, 1995)pp 43-45.
[8] General Assembly Resolution 545(VI).
[9] Human Rights: An Introduction UN document at http://meltingpot..for...ity.com/lebanon/254/humanintro.htm p.4

be assertive in the cause of human rights. Vague principles were acceptable; specific and binding obligations, with intrusive monitoring mechanisms, were not.[11]

Whereas the General assembly and the Economic and Social Council (ECOSOC) had envisaged a general "instrument" or "charter" on human rights, the Commission took the initiative, as early as 1947, in proposing specifically that, in addition to a Declaration, there should be a binding multilateral treaty on human rights. After a lengthy debate, it was concluded that adoption of the covenants would not in any way rule out the possibility of drawing up non-binding instruments that would deal with broader areas.[12]

Towards the end of 1966, ECOSOC authorized the UN Human Rights Commission to inquire into the human rights situation of specific states. The Council also authorized a systematic procedure for the processing of private complaints pertaining to systematic and gross violations of human rights, leading over time to the publication of a list of states engaged in such violations. [13] Human rights were being internationalized, not only in legal theory, but also political relations.

By 1967, the UN had moved from setting of international standards, with application left to state members, to the more delicate task of trying to get states, by varying organized international action, to apply to their nationals the rights internationally recognized.

The UN designated 1968 as the International Year for Human Rights to mark the twentieth anniversary of the Universal Declaration of Human Rights, and convened an International Conference on Human Rights in Tehran, Iran, to enhance national and

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[10] Human Rights: An Introduction op. cit. p.5
[11] Forsythe,D. The Internationalization of Human Rights op. cit. pp 61-62.

international human rights efforts and initiatives. After evaluating the impact of the Universal Declaration on national legislation and judicial decisions, the Conference approved the Tehran Proclamation, which formulated a programme for the future, addressing the problems of colonialism, racial discrimination, illiteracy and the protection of the family. The Tehran Proclamation urged the international community to ratify the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.[14]

Beginning in the 1970s, additional Conventions which anticipated the establishment of systems for monitoring standard-setting texts began to be adopted. These Conventions restated and developed a number of the principles defined in the International Covenants, on Civil and Political Rights and on Economic, Social and Cultural Rights, that deserved special attention. Each dealt with one specific type of right and articulated in more detail than possible in the Covenants, measures for the implementation of the rights set out.[15] Continuing promotion was therefore accompanied by increasing protection attempts. However, most of those protective efforts still depended largely on the cooperation of states.

Nevertheless, an incremental and diplomatic revolution occurred. The UN begun to accept private petitions claiming violations of human rights and created several

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[12] The UN and Human Rights :1945-1995 (UN Blue Books Series, Volume VII (Dept. of Public Info., UN, New York, 1995)p. 39.
[13] See The UN and Human Rights :1945-1995 op.cit. pp.37-38.
[14] Human Rights Today : A UN Priority' (UN Dept. of Public Info. New York, 1998) p.9.
[15] The UN and Human Rights, p.71. The Convention on the Elimination of All Forms of Discrimination Against Women, The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, The Convention on the Rights of the Child , The Convention on the Elimination of All Forms of Discrimination Against Women, The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ,The Convention on the Prevention and Punishment of the Crime of Genocide, The Convention (and protocol) Relating to the Status of Refugees, The four Geneva Conventions of 1949 and the two Additional Protocols are some of the instruments which were drafted.

mechanisms to deal with them. Increasingly across the UN system, there was a fragile but persistent movement towards improved supervision of states' policies on human rights. More and more human rights treaties came into force, and various agencies tried to ensure that they were implemented. Mainstream UN human rights' agencies created new monitoring mechanisms to supervise states' policies.[16]

On the other hand, human rights standards were also enshrined in other types of instruments, such as declarations, recommendations, bodies of principles, codes of conduct, guidelines and standard rules (such as the Declaration on the Right to Development; the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities; the Basic Principles on the Independence of the Judiciary; the Code of Conduct for law Enforcement Officials; and the Guidelines on the Role of Prosecutors.[17] The latter instruments have mainly moral force and provide practical guidance to states in their conduct. Some of their provisions are indeed declaratory elements of customary international law, and are thus binding. The value of such instruments rests on their recognition and acceptance by a large number of states.

The Universalization of Human Rights

Thw World Conference on Human Rights was convened in Vienna in 1993. The Conference pointed out the universality of human rights (as detailed in the Universal Declaration of Human Rights), that is, their applicability throughout the world, to all classes and races of people. In adopting the Vienna Declaration and Programme of Action by consensus, the World Conference reaffirmed the centrality of the Universal Declaration of Human Rights for human rights protection.

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[16] Forsythe D. The Internationalization of Human Rights op. cit. p.62.
[17] UN System and Human Rights (Administrative Committee on Coordination, UN, Geneva, 2000) par. 36.

Giving new impetus to the worldwide implementation of human rights norms, the Conference emphasised that most violations could be addressed by forcefully implementing existing norms through the mechanisms already available. The international community was beginning to recognize the need to protect victims of human rights violations where their states had failed them in their duty as guarantors of those rights.

The World Conference also had a catalytic role in revitalizing the human rights programme of the UN. The Vienna Declaration explicitly stated, for the first time, that all organs, programmes and specialized agencies of the UN system should have a central role in strengthening human rights.[18] The key institutional recommendation, however, was the establishment of the post of UN High Commissioner for Human Rights to coordinate all human rights activities system-wide.[19]

In 1997, as part of wide ranging reforms to enhance the effectiveness of the UN, Secretary-General Kofi Annan placed human rights at the heart of all work of the Organization. In addition, the High Commissioner for Human Rights Office and the Centre for Human Rights (the principal instrument of the UN Secretariat in the field of human rights) were consolidated into a single office of the UN High Commissioner for Human Rights. This merger gave the new High Commissioner a solid institutional basis from which to lead, as the focal point of all system wide integration of human rights activities, the Organization's mission in the domain of human rights.[20]

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[18] Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, Vienna, 25 June 1993 (A/CONF.157/24) (Part II) paras 1-18.
[19] Human Rights: An Introduction op. cit.p.7
[20] Human Rights Today: A UN Priority' op. cit. p.12

There was an overwhelming effort to better integrate human rights into the UN's overall policies and programmes whether in promoting economic and social development, or democratic structures, peacekeeping and peacemaking efforts. Through the UN's efforts, human rights today have virtually attained a universal reach.

UN Human Rights Mechanisms

UN organs have been concerned, with both the formulation of norms or standards and their observance or respect.

According to the Charter of the UN, the Organization is obliged, under Article 1 to promote and encourage the respect for human rights and fundamental freedoms and under Article 55c, to 'promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'.

The UN has proceeded in a variety of ways to achieve these objectives. To assist in the UN's work, the General Assembly and ECOSOC have established a number of subsidiary organs. These include, among others, the Commission on Human Rights, with its Sub-Commission on the Prevention of Discrimination and Protection of Minorities, UN Conventional and Extra-Conventional monitoring systems. Techniques used by these bodies have included: The adoption of resolutions designed to exercise persuasive influence on governments, groups and public opinion at large; drafting conventions and other international instruments for submission to states; convening international conferences for the drafting of such agreements; the performance of special services, including the rendering of technical assistance[21]; the preparation and dissemination of

[21] Technical advise involves the provision of advise, expertise and other support for the strengthening of domestic institutional capacities for the promotion and protection of human rights.

information on the observance of human rights; and measures adopted with respect to specific allegations that human rights have been violated to achieve remedial action by the governments concerned.[22]

These powers and methods have been summarized under three concepts: "study", "examination" and "recommendation".[23]

Principal Organs and Specialized Agencies in the UN Human Rights Field

The Security Council

The two central bodies in the UN to directly safeguard international peace and security are the Security Council and the General Assembly. The founders of the UN asserted that on a matter as important as peace and security, the Organization's 'primary responsibility' should rest with its Security Council.[24] In this context, the word 'primary has greater weight than is usually the case. For the UN General Assembly, where all members are represented, was entitled only to discuss issues of international peace and security. In some special circumstances, the General Assembly could discuss and make recommendations regarding peace and international security – Where the question was brought before it by a Member of the UN, or by the Security Council, or by a state which is not a member of the UN, and was not a question on which the Security Council was exercising its functions.[25]

However, binding decisions and action are the province of the Security Council. Furthermore, the UN members agreed 'to accept and carry out the decisions of the

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[22] Goodrich and Hambro The Charter of the UN p.377.
[23] See The UN and Human Rights p.6
[24] Article 24, UN Charter
[25] Charter of the United Nations, Articles 11(2), 12 and 35(2).

Security Council in accordance with' the Charter.[26] The reason for this privilege is that the Security Council was seen as a kind of executive body for the whole Organization, a small and powerful group that could act swiftly and decisively as emergencies arose.[27] However, this is the bone of contention – the cause of tension - between the Security Council and the General Assembly. In a number of cases, the Security has not acted as swiftly and decisively as the General Assembly would have had it act, or at all.

The General Assembly has, on occasion, interpreted Article 12(1) which allows it to discuss and recommend a matter over which the Security Council is not exercising its functions, liberally. It has made recommendations with regard to issues that were at the same time on the agenda of the Security Council. This happened, for example during the Korea War. The General Assembly assumed a primary and specific responsibility for the preservation of peace and security through the 'Uniting for Peace Resolution'[28] which established the Collective Measures Committee and gave it broad advisory functions for the maintenance of peace and security.

Under the 'Uniting for Peace' Resolution, if the Security Council was faced with a serious situation, but was paralyzed by the foreseeable use of the veto, then the question of whether to take action could be rerouted to the General Assembly, which could adopt a resolution by a highly qualified majority.[29] A substantial majority in the General Assembly at that time had felt that the UN ought to have taken action with regard to certain matters, and that, in the absence of a Security Council able to act, the General Assembly ought to act in the manner the Security Council would have acted were it able

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[26] UN Charter, Article 25.
[27] James, Alan ' The Enforcement Provisions of the UN Charter' in Goodrich L. and Simons A. (eds.) The UN and The Maintenance of International Peace and Security (UN Institute for Training and Research, Martinus Nijhoff Publishers, 1987) pp. 213-235:213.

to do so. Hence, while technically speaking the General Assembly can only recommend, a substantial majority of the members showed a tendency, with regard to certain matters and within certain limits, to act upon these recommendations as though they were legally binding decisions.[30] With the ending of the Cold War, the provisions of the Uniting for Peace Resolution were soon put, for practical purposes, entirely aside.

The imbalance of power between the two bodies, the General Assembly and the Security Council is weighted heavily in favour of the latter. According to Arias,[31] the distribution of responsibilities laid down in the UN Charter clearly creates a democratic deficit that turns the UN into an 'international government of Permanent Members'.

The often criticized inequality that irritates critics of the Security Council originates not only from the permanent status of the five, but also from their possession of the veto power.[32] The affirmative vote, or at least the absence of a negative vote, by one of the five Permanent Members, carries weight in various aspects of UN functions. The will of one member state against that of the remaining 187, may result in the paralysis of the UN. This has important implications for humanitarian interventions. In Kosovo, for example, humanitarian intervention was carried out outside the framework of the UN Charter due to the threat of a Russian or even Chinese veto to UN action. In the words of British Foreign Secretary, Robin Cook, ' the value representing the alternative to protecting human rights (that is, the reason why action on behalf of human rights has often been avoided) is not the preservation of peace, but the respect of the role of the UN

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[28] G.A.Res. 337(V), U.N.GAOR, 5th Sess.,Supp. No.20, at 110, U.N.Doc.A/1775(1950)

[29] Ibid.

[30] Morgenthau, Hans Politics Among Nations: The Struggle for Power and Peace (6th ed.)(Kalyani Publishers, New Delhi, 1995) p.508 -510.

[31] Arias, Inocencio 'Humanitarian Intervention : Could the Security Council kill the United Nations?' op. cit. p. 1019.

Security Council, or to put it more exactly, it is the respect for the veto power of a permanent member of the UN Security Council.[33]

The continued imbalance of power has led to calls for reform of the Security Council. There is agreement that the Council membership no longer accurately reflects economic and political realities among the UN membership at large. Further, there have also been for the international community to develop criteria under which humanitarian intervention can be carried out, should the Security Council be unable or unwilling to act.[34]

HUMANITARIAN INTERVENTION UNDER CHAPTER VII MECHANISMS

Article 39 of the Charter of the UN directs the Security Council to determine the existence of circumstances that warrant intervention by the UN.[35] The determination of either a threat to the peace, a breach of the peace, or an act of aggression is crucial and serves as a precondition to the exercise of the extraordinary coercive powers provided for by Chapter VII.[36]

It is in this light that the UN Security Council, following the Sharpville massacre, passed a resolution stating that South Africa's policies might qualify as a threat to peace and security and therefore allowing the U.N. to undertake Chapter VII enforcement measures to deal with the problem.[37]

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[32] See UN Charter, Article 27(3)
[33] Cook, Robin in Global Policy Forum 'Humanitarian Intervention and the UN Charter: Some Remarks' at www.globalpcy.org
[34] See generally Annan, Kofi The Question of Intervention (UN Dept. of Information, New York, 2000).
[35] The text of this article provides: 'The Security Council shall determine the existence of any act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.
[36] See Richard Falk, 'Trends and Patterns' in The Future of the International Legal Order eds. Richard Falk and Cyril E.Black, vol.I (Princeton, New Jersey, 1969)pp 48-73, p 60.
[37] Ravi Mahalingam 'The Compatibility of the Principle of Non-intervention with the Right of Humanitarian Intervention op. cit. p.249.

As long as the UN has been able to establish that a humanitarian crisis is a threat to international peace and security, then the members have been allowed to intervene.

The post-Cold war era has witnessed tremendous turmoil internal to states that has resulted in tragic humanitarian consequences.[38] As a result, the UN has been called upon to monitor, moderate and directly intervene in every major conflict since the end of the Cold War.[39] These changing circumstances have led to an important shift in UN thinking: Whereas the Charter expressed a strong distinction between international conflict and matters of an essentially domestic nature, the UN of the 1990's has internationalized many internal conflicts on the rationale that they create (not only grave humanitarian consequences but also) potential international threats to peace and security.[40]

Internal conflict, in the eyes of many political observers, is currently the most significant threat to the society of states. The UN now recognizes that contrary to a traditional positivist view, protecting human rights may not only be consistent with sovereignty, but also may be necessary for the survival of many multi-ethnic states.[41]

The General Assembly

Beyond standard setting, the UN General Assembly practices indirect protection of human rights in two ways. It passes resolutions to condemn or otherwise draw attention to violations of human rights. It also creates various agencies or holds meetings to deal with human rights.

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[38] See Karn Von Hippel, 'The Resurgence of Nationalism and its International Implications' *17 Washington Quarterly*, 185 (1994).
[39] See Weiss, Thomas G. 'Intervention: Whither the UN? *17 Washington Quarterly 109*(1994).
[40] Gordon, Ruth 'UN Intervention in Internal Conflicts: Iraq, Somalia and Beyond' *15 Michigan Journal of International Law(1994)* pp 519-550, pp544-45.
[41] Ravi Mahalingam 'The Compatibility of the Principle of Non-intervention with the Right of Humanitarian Intervention op. cit. op. cit. p.311

When a resolution targets a specific country or violation, it is difficult to evaluate the resolution's effect over time. It might be argued, for example, that the Assembly's repeated condemnations of apartheid as practiced in South Africa had some impact on changing attitudes among South Africans. At the same time, many observers are not persuaded that words apart from coercive power can have much effect[42]

Still, it would seem that General Assembly resolutions on human rights often can send important signals although this is difficult if not impossible to measure.

The General Assembly is empowered to play this role by Article 10 of the UN Charter, which allows it to "discuss any questions or any matters within the scope of the ...Charter" and to make recommendations to the member states on those subjects. The Assembly is also enabled to do so through Article 13 (1)(b) which authorizes it to initiate studies and make recommendations for the purpose of assisting in the realization of human rights and fundamental freedoms.

To further appreciate the degree of authority of the Assembly resolutions, one must keep in mind the general obligation of member states, under articles 55 and 56 of the Charter, to act "in cooperation" with the UN. In this regard, the impact of a General Assembly recommendation may be particularly strong in the case of a text adopted unanimously. Since the early days of the UN, this has been true of several resolutions, including the one proclaiming the Universal Declaration of Human Rights in 1948. Similarly, the General Assembly in 1946, approved two resolutions relating to genocide. In the first, the Assembly affirmed the principles of the Charter of the Nuremberg Tribunal. In the second, the basic resolution on genocide, the Assembly affirmed that

[42] Weiss T. et. al eds. The UN and Changing World Politics. op.cit. p 131.

genocide was a crime against international law and begun the normative process which culminated in 1948 with the adoption of a convention against this crime.[43]

The Economic and Social Council (ECOSOC)

The Economic and Social Council, established by the Charter as an intergovernmental body under the authority of the General Assembly, makes studies and recommendations on a broad spectrum of issues, encompassing not only "respect for, and observance of human rights and fundamental freedoms for all", but also "economic, social, cultural, educational, health and related matters".

Under Article 62(2) of the Charter of the United Nations, ECOSOC 'may make recommendations for the purpose of promoting the respect for, and observance of, human rights and fundamental freedoms'. The language of Article 62(2) differs from that of Article 13(1)(b) which defines the broad powers of the General Assembly with respect to human rights and fundamental freedoms. It is more restrained in tone. It also differs from that of Article 62(1) (which addresses matters apart from human rights) in that no mention is made of the power to "make or initiate studies and reports". Furthermore, it does not specify to whom recommendations are to be made. In practice, however, ECOSOC has interpreted its powers liberally. For example, in 1970, it adopted Resolution 1503, which permitted its sub-organs to deal with private communications alleging violations of human rights.

ECOSOC has also made or initiated studies and reports on a wide range of subjects in the field of human rights, including freedom of information, status of women, slavery and servitude, forced labor, prevention of discrimination and protection of

[43] See The UN and Human Rights 1945-1995 op. cit. p.10.

minorities.[44]It has established commissions[45] and sub-commissions for the promotion of human rights, as mandated under Article 68; it has appointed *ad hoc* bodies and rapporteurs; and it has requested specialized agencies and the Secretary General to make studies and reports.

While the power of ECOSOC to make or initiate studies in the field of human rights has not been challenged, questions have arisen whether, to what extent, and under what conditions it may conduct direct inquiries or field investigations in matters relating to human rights. In those instances where the question has come up, it has been fully recognized that such inquiries cannot be carried out except with the consent of the governments concerned.[46]

ECOSOC has limited itself to stating its evaluations and making its recommendations in general terms without naming individual states.[47]

Nevertheless, ECOSOC has expanded the scope of activity undertaken through its sub-organs, the Human Rights Commission and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities.Towards the end of 1966, for example, a movement developed at the UN for the adoption of effective monitoring measures to prevent human rights violations. The General Assembly, in its resolution 2144A(XXI) of 26 October 1966, invited ECOSOC and the commission on Human Rights "to give urgent consideration to ways and means of improving the capacity of the UN to put a stop to violations of human rights wherever they may occur". On the basis of this resolution, the ECOSOC, in its resolution 1235 (XLII) of 6 June 1967 expressly authorized the

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[44] Goodrich and Hambro, The UN Charter p 414.
[45] For example, in 1946, it established the Commission on Human Rights whose first priority was to elaborate an international bill of rights.
[46] Goodrich and Hambro, The UN Charter p 415.

Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to examine information relevant to gross violations of human rights in all countries.

Furthermore, the Commission on Human Rights was authorized, to make " a thorough study" of situations, which "reveal a consistent pattern of violations of human rights", and to report, with recommendations, to ECOSOC.[48]

Three years after the passage of resolution 1235, ECOSOC adopted E/RES/1503, which permitted its sub-organs to deal with private communications alleging violations of human rights. This resolution permitted NGOs and individuals – anyone with direct and reliable knowledge – to lodge an allegation confidentially with the Secretariat, which would then pass a sanitized version on to the Human Rights Sub-Commission for future action[49] should a consistent pattern of massive and serious abuse be evident.

There are several limitations to this procedure. Principal among them is the fact that the time taken between the presentation of a petition to the time the Commission of Human Rights orders a 'thorough study' or investigation of the allegations is extremely long.[50] Further, where the private petitions are treated in a confidential process, this has minimized negative publicity that could be directed at an offending government. Ironically, though there is a public and confidential process, a state could minimize public scrutiny of its rights record by responding somewhat to private petitions in the confidential process.

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[47] Goodrich and Hambro, The UN Charter p 416
[48] The UN and Human Rights op.cit. p.38
[49] Forsythe D. The Internationalization of Human Rights op.cit. p.68

THE HUMAN RIGHTS COMMISSION

The main intergovernmental policy-making body concerned with human rights issues is the Commission on Human Rights. It was established in 1946 by ECOSOC. The Commission provides overall policy guidance, studies human rights problems, develops and codifies new international norms, and monitors the observance of human rights around the world. Made up of 53 Member states elected for three-year terms, the Commission provides a forum for states and intergovernmental and non-governmental organizations to voice their concerns about human rights issues.[51]

Despite the west's domination of the UN during its early years, the Human Rights Commission was content to promote rights by setting standards rather than by trying to protect them, even indirectly, through various forms of diplomatic pressure. The early commission adopted the position that it lacked the authority to inquire into rights behavior in specific states. This was because there was uncertainty about the status of international law on the subject and also especially, because of fear of political exploitation during the Cold-War years. Generally, there was a timidity on the part of member states towards human rights issues and almost all expectations were low about utilizing the UN to act on human rights questions.

From the early 1970s to the early 1990s, however, the Human Rights Commission struggled to find ways of working for human rights in meaningful ways. In the 1970s, after an expansion in the Commission's membership, doctrinal disputes over the relationship of socioeconomic and civil-political rights and over which had priority, gave way to an increasing focus on the protection of specific civil and political rights and

[50] See English, Kathryn and Stapleton, Adam (eds.) The Human Rights Handbook : A practical guide to monitoring human rights (Juta and Co. Ltd. Kenwyn, South Africa, 1997) pp 130 – 131.

especially those of primary interest to the Third World. More attention was paid, for example, to human rights violations by South Africa and to Israeli practices in the occupied territories.[52]

Despite the biases brought to the Commission by Third World states, one could nevertheless chart some improvement in systematic attention to a broad range of rights problems. The Commission, like the Sub-Commission on the Prevention of Discrimination, appointed independent rapporteurs for nonpartisan reports. It voted working groups to focus on special problems beyond those discussed in regular meetings. The Commission also dealt in various ways with a series of specific states, both privately and publicly.

The key to these and other developments within the Commission was the role of Third World states that were truly nonaligned. These were vigorous and balance in their attention to human rights violations. A number of Third World states were genuinely interested in human rights, even civil and political rights. Hence, these states voted their concern for self-determination in Kampuchea and Afghanistan, and they also voted for economic rights and against racial discrimination.[53] It was Third World support for Western position, and vice versa, that allowed the Commission to do as much as it did, after 1970.

Nevertheless, it is frequently difficult to prove that the Human Rights Commission has, through the recommendations rendered, had a specific and beneficial impact on a situation. Further, the publication of a blacklist of states that have been the

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[51] Human Rights: An Introduction op. cit. p.9
[52] See generally, Tolley, Howard, Jr. The UN Commission on Human Rights (Westview Press, Boulder, Colorado, 1987)
[53] Ibid. See also Moynihan, Daniel Patrick A Dangerous Place (Little and Brown, Boston, 1978) p. 281.

subject of private complaints under the 1503 Procedure, has proved to be a very weak form of pressure since specifics are not provided.

Still, the Commission retains considerable power to generate international publicity on human rights issues. Its members now disregard the former taboo against attacking states by name in public debate and make sweeping public indictments. Indeed, the Commission, in the words of one observer, has become ' the world's first intergovernmental body that regularly challenges sovereign states to explain abusive treatment of their own citizens.[54]

Essentially though, the Commission's activities are supposed to socialize or educate states into changing their views or policies over time toward the standards recommended.

THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities is composed of individual experts rather than state or governmental representatives. It screens private petitions before sending them to the Human Rights Commission. However, and as discussed, the petition process has only generated weak pressure.

The Sub-Commission has however been more bold than the Commission on Human Rights, to use public pressure on states. It has been recorded that the members of the Sub-Commission have been so assertive at times, that its recommendations have often been rejected or ignored by government representatives in the Commission of Human

Rights.[55] It has also tried a variety of procedures to improve its functioning, such as working groups and special rapporteurs that act beyond its regular sessions to address particular geographical or topical problems.[56]

UN HUMAN RIGHTS MONITORING MECHANISMS

At the heart of the UN human rights monitoring system are the two types of mechanisms, conventional and extra-conventional. Six core human rights treaties provide for the conventional monitoring mechanisms that consist of six treaty bodies or committees. These conventional mechanisms monitor states parties' adherence to the international standards established in the treaties and advise them on any changes that might be necessary or useful in meeting those objectives. However, state parties must ratify these treaties before their principles and standards apply to them.

At the international level, the reporting system is the only framework in which senior officials can be called to account for the laws and policies applied by their governments in the field of human rights. However, the obligation to submit a report to a treaty-monitoring body is not linked to the obligation to remedy any violation, which might be brought to light during the consideration of such a report.

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[54] Tolley, Howard, Jr. The UN Commission on Human Rights op. cit.p.66.
[55] See Forsythe, D.The Internationalization of Human Rights op. cit. p. 64 and Weiss, T. et. al. (eds.) The UN and Changing World Politics op. cit. p. 138.
[56] Forsythe, D.The Internationalization of Human Rights op. cit. p.64

THE HUMAN RIGHTS COMMITTEE

The Human Rights Committee monitors the implementation of the International Covenant on Civil and Political Rights. The First Optional Protocol, which entered into force together with the Covenant, authorizes the Committee to consider also allegations from individuals concerning violations of their civil and political rights. The Committee is also concerned with the Second Optional Protocol on the abolition of the death penalty.[57] However, the protocol dealing with communications from individuals limits the powers of the Human Rights Committee to establishing the facts and formulating recommendations.[58]Further, following its consideration of a periodic report, the Committee is to confine itself to formulating general, objective observations or comments.

However, since 1980 "general comments" have been used to interpret the covenant in a specific way. Many states have been questioned closely about their reports and policies; frequently, additional information is requested and provided.[59]

In a growing number of countries, there is evidence to suggest that because of Committee questions and observations, a state has been led to change its national legislation to conform to the Covenant's requirements.[60] It has been reported that national laws in Sweden and Senegal and perhaps elsewhere have been changed, apparently as a result of committee questioning.[61]

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[57] Human Rights: An Introduction op.cit. p.19
[58] The UN and Human Rights 1945-1995 op.cit. p.46
[59] Forsythe,D.The Internationalization of Human Rights op. cit.
[60] Weiss, T. et. al (eds.)The UN and Changing World Politics op. cit. p.138

THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Committee on Economic, Social and Cultural Rights monitors the International Covenant on Economic, Social and Cultural Rights. Its functions duplicate those of the Human Rights Committee with regard to the consideration of reports and formulation of general comments on the content of the rights recognized in the relevant instrument. It does not however, provide for the possibility of receiving communications from states or individuals. Instead, the socio-economic committee takes a cooperative or positive approach toward reporting states, prodding states to think seriously about what the Covenant on Economic, Social and Cultural Rights means in their jurisdiction.

The reporting methods that have been adopted by these Committees have served as models for other UN human rights treaty monitoring bodies.

The other UN Conventional Monitoring Committees include; The Committee on the Elimination of Racial Discrimination (CERD) which monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination; the Committee on the Elimination of Discrimination Against Women (CEDAW) which monitors the Convention on the Elimination of All Forms of Discrimination Against Women; the Committee Against Torture (CAT) monitors the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Committee on the Rights of the Child (CRC) monitors the Convention on the Rights of the Child.

EXTRA-CONVENTIONAL MECHANISMS

This system refers to the special procedures of the Commission on Human Rights. The *ad hoc* nature of their establishment allows for a more flexible response to serious human rights violations than the treaty bodies. The Commission can appoint independent

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[61] Forsythe D. The Internationalization of Human Rights op. cit. p.64

experts of international stature to examine, monitor and publicly report either on the situation of human rights in specific countries or, in the case of a thematic mandate, on serious human rights violations related to certain phenomena in various parts of the world, such as religious intolerance or the use of mercenaries.

For example, the Commission on Human Rights appointed The Special Rapporteur on Extra Judicial, Summary or Arbitrary Executions to investigate into the situation in Rwanda in April 1993. The Rapporteur issued a report that called for a number of measures including a mechanism for protecting Rwandans against any further massacres, dismantling the armed militias, further investigations and bringing violators of human rights to account, an end to arbitrary detentions and arrests and support for local human rights associations.[62]

The mechanisms are able to expose, where it is warranted, to an international audience, human rights violations in almost any country in the world, regardless of whether (for the most part), the government is party to a particular human rights treaty.[63] This is an advantage over Conventional mechanisms, which can only see to the implementation of human rights obligations in the jurisdiction of state parties. However, they too have to rely on the good faith of the government in whose territory they want to operate. While the recommendations contained in the reports are a valuable guide on the steps that a government needs to take to stop the human rights violation in question, most of the mechanisms are so under-resourced that it is rarely possible for them to follow up

[62] Human Rights Watch Report 1994 (Events of 1993) (Human Rights Watch, New York, Washington, 1993) p. 38.
[63] Amnesty International The UN Thematic Mechanisms : An Overview of their work and mandates (Amnesty International and the Law Society, London, 1999) p.2

on country visits (these are on-site visits to study first-hand, any improvement in the situation of the country in question).[64]

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

A noteworthy development in the continuing evolution of human rights was the UN General Assembly's establishment of the post of High Commissioner for Human Rights December 1993 after the Vienna World Conference on Human Rights.

The Office of the High Commissioner for Human Rights is taking steps to strengthen the UN human rights machinery by supporting the human rights bodies and monitoring mechanisms in their efforts to streamline their work.

However, the disparity between the increasing UN human rights activities and the resources available to carry them out is constantly growing and has become a cause of major concern to the Office of the High Commissioner for Human Rights.

THE OFFICE OF THE SECRETARY-GENERAL

Virtually all Secretaries-General have engaged in good offices or quiet mediation for the advancement of human rights. But until Kofi Annan, none has systematically thrown the full weight of his office into the quest for human rights protection.

Whether one speaks of Dag Hammarskjöld or Kurt Wadheim, two very different Secretaries-General, the point on human rights remains the same. Hammarskjöld, was personally not much interested in human rights at the UN and concentrated on finding a diplomatic role for the UN in the East-West conflict. Hammarskjöld did however, find time to take up the case of U.S. airmen detained in China after the Korean War. Waldheim, also took up human rights or humanitarian questions such as the situation of

[64] The UN Thematic Mechanisms op. cit.p.6.

refugees in Africa. Much the same could be said of U Thant from Burma, who was not as personally committed to individual rights as he was to the collective right of peoples to self-determination. However, he too, engaged in quiet diplomacy on occasion for human rights.[65]

As human rights became more entrenched in UN proceedings, the UN Secretaries-General became more openly active on the issue. This was especially true when the human rights issue was integrated with peace and security matters.[66] Under Article 99 of the UN Charter, the Secretary General may bring to the attention of the Security Council, any matter which in his opinion may threaten the maintenance of international peace and security. All Secretaries-General have seen their primary role as producing progress in international peace and security. However, in a period where human rights violations have grave implications for international peace and security, the Secretaries-General's concern for human rights has increased accordingly.

Where human rights have been linked to peace, for example, during the period when Pérez de Cuéllar served as Secretary General, this office became bold and innovative, and was increasingly drawn into rights questions that had previously been considered the domestic affairs of states. Boutros Boutros-Ghali also became as deeply involved in human rights issues as Pérez de Cuéllar had been.

Essentially, the Secretary-General in person sets the tone on human rights for the Secretariat. Being the chief administrative officer of the UN,[67] he has the capacity to mobilize political will among the membership on key issues on the agenda. Further, the Secretary General (as a function of his empowerment under Article 99 of the UN Charter)

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[65] Weiss T. et al (eds.) The UN and Changing World Politics op. cit. p. 133.
[66] Ibid

can have, and has had (as will be shown in Chapter Four of this study), a decisive influence on decision making in the Security Council, especially with regard to matters pertaining to international peace and security. This explains the attention that has been paid to human rights since Kofi Annan assumed the position of Secretary General.

Conclusion

Little by little, the UN has broadened its competence in the field of human rights, where it has developed an extensive body of norms. By making maximum use of the Charter's potential while respecting its principles, the UN has instituted an international system of implementation - governmental reports, individual communications, studies, special reports, publicity, recommendation to members, educational and technical assistance - through it's treaties and resolutions.[68]

International human rights covenants specify international legal obligations on the parties to the covenants to honour protect and enforce within their respective territories, and in respect of their citizens, individual rights covering practically all aspects of their lives. On the other hand, there has been a widespread acknowledgement of the existence of peremptory norms of general international law (*jus cogens*) by the international community, from which no derogation is permitted. Amongst these norms is the prohibition of the act of genocide.

Despite ample treaties and conventions purporting to guarantee human rights and prevent gross violations of human rights, there exists no explicit authority for humanitarian intervention. The 1948 Convention on the Prevention and punishment of the Crime of Genocide, which entered into force in 1951, provides for prosecution of

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[67] UN Charter, Article 97
[68] The UN and Human Rights, P.9

violators but does not authorize armed intervention to prevent or stop genocide. Similarly, the Universal Declaration of Human Rights and the International Convention on Civil and Political Rights do not provide such authorization.

On the other hand, the Charter does not demand from states any action greater than their cooperation with the UN in the promotion of respect for, and observance of, human rights. Such cooperation may include, for example, the making of reports on steps taken to give effect to recommendations of the General Assembly and the Economic and Social Council.[69] Hence, while there are mechanisms within the Charter for the protection and enforcement of international peace and security,[70] there are no equivalent provisions or mechanisms for protection of human rights.[71]

One important reason, for the Charter's weak provisions on human rights was the general consensus in 1945 that the protection of human rights would continue to be within the sphere of state action despite the newly established legitimacy of international concern on the matter. States would be the implementing bodies in the area of human rights while the UN would play the secondary role of promoting and encouraging respect for those rights.[72]

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[69] Article 64(1) Charter of the UN. See also, Art 1(3); Art 13(1)(b); Art 62(2) for further exhortations on the UN or its member states to cooperate in the promotion of human rights.
[70] See Chapter VII and Article 2(4) of the UN Charter
[71] Peterson, Frederick "The Façade of Humanitarian Intervention for Human Rights in a Community of Sovereign Nations" 15(1998) *Arizona Journal of International and Comparative Law* pp. 871–904:879.
[72] See Sohn, 'A Short History of UN Documents on Human Rights' Commission to Study the Organization of Peace, the UN and Human Rights 18th Report (Dobbs Ferry, New York, 1968) pp.43-56, p.43.

Therefore, as Onuf and Spike observe, the Organization does not normally utilize its authority and power for direct protection.[73] Howard also supports the view that if progress in human rights is most fundamentally characterized by acceptance of the idea of human rights and a willingness by public authorities to respond favorably to personal claims based on human rights, then over time, perhaps UN agencies may make significant contributions, along with other causal factors.[74]

Hence the UN's primary goal in the human rights field has become long-term implementation or indirect protection, against the background of promotion. The sum total of UN activity is supposed to socialize or educate actors into changing their views and policies over time towards a universal human rights standard, as defined by UN instruments.[75]

Such mechanisms for promotion and long-term implementation of human rights may seem inadequate in situations where governments show that they are unwilling or unable to curb massive atrocities taking place in their jurisdictions. Nevertheless, it has been maintained that a situation is no longer domestic when international obligations, whether in treaty or customary law, have been violated.[76] Moreover, a legal order that permits such crimes to go on uncurbed or unpunished scarcely deserves general support.

The UN has therefore, on several occasions undertaken to enforce international human rights obligations. It has done so through determining that a particular humanitarian catastrophe poses a threat to international peace and security and calling for

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[73] Onuf, N.G. and Spike, Peterson V. 'Human Rights and International Regimes' *Journal of International Affairs* 37(2) (Winter, 1984) 329.

[74] Howard, Rhoda 'Human Rights, Development and Foreign Policy' in Forsythe, David P. ed. Human Rights and Development (St.Martins, London, Macmillan, and New York, 1989) pp 38 –56, p.45.

[75] Forsythe, D 'The Internationalization of Human Rights p.77. See also Ruggie, John F.N. (Ibid. p.79) who asserts that UN activity and international human rights instruments are designed not to provide human rights or to enforce human rights provision, but to nudge states into permitting their vindication.

military measures to correct the situation. Indeed, the early 1990s witnesses a new development in the manner in which the UN addressed grave and massive violations of human rights. Short-term enforcement actions under Chapter VII of the UN Charter were reverted to more than once, in an effort to alleviate massive human suffering.

[76] See UN Repertory of Practice of UN Organs (1955) on Art 2(7) paras. 391-406.

CHAPTER FOUR

CASE STUDIES OF UN HUMANITARIAN INTERVENTIONS

HUMANITARIAN INTERVENTION IN RWANDA

Background:

The Rwanda genocide was one of the worst tragedies that befell humankind in the 20th century. Ironically, the genocide and massive displacement of Rwanda's population in 1994 was set off in the context of an OAU supported regional peace effort to deal with a thirty-five year old refugee problem. After a 1990 refugee invasion of Rwanda by the Tutsi led - Rwandan Patriotic Force (RPF), Rwanda's neighbours – Burundi, Tanzania, Uganda and former Zaire – each of which had large numbers of Rwandese refugees, became actively involved in negotiations to arrange a cease-fire and a peace arrangement.

After several years of negotiations, a comprehensive peace agreement was signed on 4 August 1993 between the Government of Rwanda and the RPF and the United Nations became involved. Proceeding in optimistic incremental stages, it supported, but did not lead, the regional peace efforts designed to encourage the Hutu – dominated government to deal with the Tutsi expatriates and the moderate factions in Rwanda[1]. On 8 February 1993, an RPF violation of a cease-fire agreement had led both the Government of Rwanda and the Government of Uganda, in separate letters to the Security Council, to request the UN to establish an observer mission along their common border in order to ensure that no military assistance was provided to the RPF from

[1] Feil, Scott R. Preventing Genocide : How the Early Use of Force Might Have Succeeded in Rwanda A Report to the Carnegie Commission on Preventing Deadly Conflict (Carnegie Corporation of New York, New York, 1988) p. 1.

Ugandan territory and to forestall any spread of the military conflict in Rwanda into the territory of Uganda.[2]

On 20th May 1993, the UN Secretary General proposed the establishment of the United Nations Observer Mission Uganda – Rwanda (UNOMUR) along the Ugandan side of the border.[3] Prodded by the UN, the OAU and surrounding countries, the government of Rwanda and the RPF finally reached a settlement on 4th August 1993 at Arusha, Tanzania. The parties to the Arusha Peace Accords pledged a cessation of hostilities, reparation of refugees and installation of a new broad – based transitional government. They also called for an expanded UN presence to support implementation of the Arusha framework.[4] On 22nd June 1993, the Security Council adopted Resolution 846 (1993) establishing UNOMUR as requested.[5] UNOMUR's objective was to monitor the Uganda-Rwanda border from the Ugandan side and assist in the reduction of weapons traffic and violent incidents. Disagreements between the UN and Uganda over the status of forces, however, delayed UNOMUR's deployment.[6]

The Secretary-General, on 24th September 1993, presented an operational plan for the United Nations Assistance Mission for Rwanda (UNAMIR), to maintain security while the transitional Government was being set up. He further recommended that the mission should operate under the command of the United Nations, vested in the Secretary-General, under the authority of the Security Council.

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[2] See UN Doc. S/25356, 3 March 1993 and S/25355, 3 March 1993
[3] UN Doc. S/25810, 20 May, 1993
[4] Feil, Scott R. Preventing Genocide : How the Early Use of Force Might Have Succeeded in Rwanda op. cit. p. 5.
[5] UN Doc. S/RES/846 (1993), 22 June 1993.
[6] Feil, Scott R. Preventing Genocide : How the Early Use of Force Might Have Succeeded in Rwanda op. cit. p.4.

The Secretary General recommended that two conditions needed to be met, for UNAMIR to be successful. While the co-operation of the parties was crucial, there would also be a need for the timely provision of the necessary human and financial resources. He stressed that 'at a time of unprecedented financial constraints facing the United Nations,'[7] it was 'imperative that Member States be prepared to assume the obligations resulting from the new mandates they entrust to the Organisation'.[8]

The Security Council authorized the establishment of UNAMIR for six months and provided that its mandate end after national elections and the installation of a new government, not later than December 1995.[9] Later, the Council reaffirmed its approval for deployment of UNAMIR as outlined in the 24th September 1993 report by the Secretary General.

UN involvement in the Rwandan crisis was therefore established early. The concern emanating especially from the Secretary General during this early phase was as diligently sustained as were UN efforts made in support of the peace initiatives. With the conclusion of the Arusha Peace Agreement and the deployment of UNAMIR, it seemed that Rwanda had received incredible regional and international support to put its house in order. However, there were signs that trouble was brewing.

Early Warnings of Genocide and UN response

There were numerous signs for the apocalypse that was unleashed after April 6th 1994. In February, Belgian foreign Minister Willy Claes had described the political

[7] At that time, the UN was overstretched due to its financial and logistical commitments to peacekeeping operations around the world.
[8] Report of the Secretary General on Rwanda, requesting establishment of a United Nations Assistance Mission for Rwanda (UNAMIR) S/26488, 24 September 1993.
[9] S/RES/893 (1994), 6 January 1994.

situation as 'five minutes to midnight'.[10] He also alerted the Secretary General that 'a prolongation of the current political deadlock could result in an irreversible explosion of violence'.[11] Similarly, in March, the Special Representative of the UN Secretary General, Jaques Roger Booh-Booh said that 'the peace process is at a standstill. The spectre of a new war is persisting'.[12]

From 8th-17th April 1993, the Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions of the United Nations Commission on Human Rights visited Rwanda to investigate the allegations of human rights violations and ethnically related massacres.[13] In his report, the Special Rapporteur noted that the October 1990 invasion by the Tutsi-led RPF had resulted in the collective labelling of all Tutsi within Rwanda as RPF accomplices. This linkage, subsequent climate and the directives that followed, triggered the massacres of civilians. He also pointed out that a climate of mistrust and terror prevailed in Rwanda and that violence had become a feature of everyday life. He warned, especially concerning the displacement of populations within Rwanda, as persons fled from combat zones and areas of inter-communal violence, that 'The question of the displaced persons is nothing short of a time bomb with potentially tragic

[10] Letter dated 14th March 1994 from the Minister for Foreign Affairs of Belgium to the Secretary-General expressing concern that the worsening situation in Rwanda may impede UNAMIR's capacity to fulfil its mandate, in The UN and Rwanda 1993-1996, UN Blue Books series, Volume X, Department of Public Information, New York, 1996) Texts of Documents, p.118.

[11] Ibid

[12] Rakiya Omaar and Alex de Waal Rwanda: Death, Despair and Defiance (Africa Rights, London ,1994) p.665.

[13] During 1992, the Special Rapporteur received reports and allegations relating to extrajudicial, summary or arbitrary executions of unarmed civilians by the Rwandese security forces in connection with the armed conflict between government security forces and the Rwandese Patriotic Force since October 1990. He also received information concerning killings of members of the Tutsi minority, in particular the Bagogwe clan, allegedly perpetrated with direct or indirect involvement of the security forces. Those violations of the right to life concerned at least 172 persons in 1992. See the report submitted to the Commission on human Rights at its forty-ninth session (E/CN.4/1993/46, paras. 502 to 504).

consequences if it is not resolved quickly principally by a return to peace and the arrest of the instigators of the massacres'.[14]

Concerning massacres of civilian populations, the Special Rapporteur confirmed the allegations. He stated that killings had taken place not only in the combat zones during or after clashes, but also in areas situated some distance from the hostilities. In the latter case, it had been shown repeatedly that government officials were involved, either directly by encouraging, planning, directing or participating in the violence, or indirectly through incompetence, negligence or deliberate inaction. The number of victims had sometimes reached tragic proportions, as for example in Kibilira, where at least 348 persons were said to have been killed in 48 hours shortly after the outbreak of war in October 1990.[15]

On the basis of the report, the Special Rapporteur called for a number of measures including a mechanism for protecting the Rwandese against any further massacres, dismantling the armed militias, further investigations, brining violators of human rights to account, an end to arbitrary detentions and arrests, and support for local human rights associations.[16]

While the Special Rapporteur's report was submitted to the Commission on Human Rights in August, 1994, it largely served to confirm allegations that were already with the Commission. By the end of the Rapporteur's visit to Rwanda, the information collected by the Special Rapporteur awaited official submission prior to concrete action. Meanwhile, all UN efforts remained focussed on the civil war and ongoing peace

[14] See Report by the Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions on his mission to Rwanda, 8-17 April 1993, including as annex II the statement of 7 April 1993 of the Government of Rwanda concerning the final report of the independent International Commission of Inquiry on human rights violations in Rwanda since 1 October 1990. UN Doc. E/CN.4/1994/7/Add.1,11 August 1993.

initiatives, on the premise that the outcome of the latter would resolve any underlying ethnic hostilities.

Nonetheless, the report clearly laid out a platform for action by the UN. In pointing out the existence of 'two wars' - one between the RPF and government forces and another, the massacres of the Tutsi minority and moderate Hutus by government forces and civilians, the Special Rapporteur gave the UN a clear picture of the situation on the ground.

More warnings on grave violations of human rights were later issued on 11th January 1994. In a series of communications, the UNAMIR base in Kigali informed the UN headquarters in New York of reports that Hutu militia known as the *interahamwe* ("those who stand together" – the irregular militia organized, trained and equipped by units of the RGF and often led by local political leaders) were formulating a plot to kill large numbers of Tutsis in Kigali using stockpiled weapons. In response, that same day, the United Nations Department of Peace-Keeping Operations (DPKO) instructed UNAMIR to inform the President of Rwanda and representatives of three western embassies in Kigali of these reports and to request the President of Rwanda to ensure that these activities were discontinued.[17]

Later on, in response to a suggestion by the Force Commander that UNAMIR mount a military operation using overwhelming force to address the issue of the weapons caches, DPKO informed UNAMIR headquarters that such action went beyond the UNAMIR mandate which authorized the mission to contribute to the security of Kigali in a weapons-free zone, but which also made it clear that such a zone had to be established

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[15] Ibid
[16] Ibid

'by the parties'. DPKO therefore emphasised that the responsibility for the maintenance of law and order must remain with the local authorities and that while UNAMIR could assist in arms recovery operations, it was to avoid entering into a course of action that would lead to the use of force and to unanticipated repercussions.[18] In a sense, the UN's experience in Somalia had begun to haunt the Rwanda operation as DPKO felt that UNAMIR should keep strictly within the boundaries of what it was mandated to do and not what it felt obliged to do.

Therefore, despite clear evidence of mounting tension, DPKO, which was responsible for UNAMIR, made no contingency plans or efforts to strengthen the mission's preparedness for worst-case scenarios before the acute crisis erupted on 6th April. Part of the reason for this was that it had limited institutional capacity in face of the rapid increase in peace-keeping operations worldwide. UNAMIR's supply and sustenance situation never progressed beyond the critical point. There were no stocks of water, food, ammunition, fuels and lubricants, nor were there the skilled mechanics and logisticians to support the force in the field. Civilian contractors provided communications support consisting of a variety of equipment, including hand held, insecure radios and local telephones. While national and UN bureaucracies were negotiating reimbursement rates, UNAMIR was finding that its logistics arrangements severely constrained its ability to conduct extensive operations in support of the peace process.[19] According to Power, every aspect of UNAMIR was run on a shoestring. Furthermore, very little could be procured locally, given that Rwanda was one of Africa's

[17] The UN and Rwanda 1993-1996 op.cit. p.118
[18] The UN and Rwanda op.cit. p.32
[19] Feil, Scott R. Preventing Genocide : How the Early Use of Force Might Have Succeeded in Rwanda op. cit. pp5-6.

poorest nations. Replacement spare parts, batteries and even ammunition could rarely be found. Worse still, although some 2 500 UNAMIR personnel had arrived by early April 1994, few soldiers had the kit they needed to perform even basic tasks.[20]

On the other hand, DPKO's communications (concerning the situation in Rwanda) to the Security Council were tailored to the expectations of what the Council would approve. Options were formulated in terms of standard operating procedures, rather than the unique needs of the situation and instructions to the field were heavily influenced by a concern to reduce risk, so as to avoid "failures".[21]

During this period, prior to the outbreak of the genocide, the UN unrelentingly continued to make calls for the prompt installation of the provisional institutions outlined in the Arusha Peace Agreement[22] and on 18th March 1994, the Prime Minister-designate of Rwanda announced the proposed composition of a broad-based transitional government. Meanwhile, UNAMIR, with a troop strength of 2,539 completed phase I of its operational plan.[23]

Breakout of Widespread Human Rights Violations and UN Response

Peace efforts were blighted when on 6th April 1994, a plane carrying President Habyarimana and President Cyprien Ntaryamira of Burundi was shot down on its approach to Kigali, killing the two presidents.

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[20] Power, Samantha 'Bystanders to Genocide' *The Atlantic Monthly* September 2001 at www.atlanticmonthly.com

[21] The International Response to Conflict and Genocide : Lessons from the Rwanda Experience (Steering Committee of the Joint Evaluation of Emergency Assistance to Rwanda) at http://www.reliefweb.int/library/nordic/index.html

[22] See UN Doc. S/prst/1994/8, 17 February 1994 – Statement by the President of the Security Council expressing concern over delays in establishing a transitional government and the deteriorating security situation in Rwanda.

[23] See Second Progress Report of the Secretary-General on UNAMIR for the period from 30th December 1993 to 30th March 1994. UN Doc. S/1994/360, 30th March 1994.

Almost immediately, the systematic killing of Tutsis and Hutu members of the political opposition begun.[24]Members of the Presidential Guard started killing Tutsi civilians in Ramera, a section of Kigali near the airport. Less than half an hour after the plane crash occurred, roadblocks, manned by Hutu militiamen often assisted by *gendarmerie* or military personnel, were set up at which identity cards of passers-by were checked and Tutsis were taken aside and killed.[25]

During the night of 6th to 7th April 1994, violence spread out to other areas of the capital. Members of the Presidential Guard and other units of the Rwandese armed forces, political party militias, as well as gangs of armed civilians, were said to have gone from house to house, killing thousands of civilians, including women and children. Some were witnessed using lists and maps to find their victims.[26]

On 7th April 1994, fighting reignited between the Rwandese Government Army (RGA) and the RPF and all authority in the capital collapsed. UNAMIR forces stationed in the capital tried to prevent the killing and to contain the conflict, but the mission had neither the mandate nor the force to coerce the two sides into ending the violence. UNAMIR, charged with monitoring and assisting with the implementation of the Arusha Peace Agreement, had been established as a peace-keeping force under Chapter VI of the Charter of the United Nations, and therefore lacked the enforcement powers of Chapter VII operations. Further, the resumption of the fighting in Rwanda made it possible for UNAMIR to carry out the tasks emanating from its original mandate.[27] On the other

[24] UN Doc. S/1994/470, 20 April 1994. Special Report of the Secretary-General on UNAMIR.
[25] Letter dated 21 July 1994 from the Secretary-General to the President of the Security Council transmitting the report on violations of international humanitarian law in Rwanda during the conflict, prepared on the basis of the visit of the United Nations High Commissioner for Human Rights to Rwanda (11 – 12 may 1994) UN Doc.S/1994/897, 25 July 1994.
[26] Ibid
[27] The UN and Rwanda 1993-1996 op.cit. p.38

hand, the field mission had very limited authority to make decisions. Routine matters and issues were heavily dependent on the judgement of the situation in the field by New York.[28]

Later in the day, the incumbent Prime Minister, Ms Uwilingiyimana and ten Belgian peace-keepers assigned to protect her were brutally murdered by the RGA soldiers in an attack on the Prime Minister's home. In New York, the Security Council condemned the acts of violence and continued to urge all parties to implement the Arusha Agreement, particularly the cease-fire.[29]

Although there were at the time 2, 539 UNAMIR troops in Rwanda, the majority contingents were from Bangladesh (937), Ghana (841) and Belgium (428).[30]The decision by the Belgium Government on 12th April 1994 to immediately withdraw its contingent, following the brutal murder of ten of its troops, came as a big blow to UNAMIR. Not only had Belgium contributed the best-equipped contingent to UNAMIR in terms of heavy weaponry, vital logistics and communications capacity, but Belgian troops had also built a reputation around themselves as being the specialists for peacekeeping operations in Africa.[31] Therefore, their withdrawal was likely to translate into a campaign for the withdrawal of other UNAMIR troops.

The UN Secretary-General, in assessing this new development, informed the Security Council that it would in his view, be extremely difficult for UNAMIR to carry out its tasks effectively and that 'the continued discharge by UNAMIR of its mandate

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[28] The International Response to Conflict and Genocide, op.cit.
[29] See Statement by the President of the Security Council regretting the deaths of the Presidents of Rwanda and Burundi and condemning all acts of violence in Rwanda, particularly the deaths of 10 Belgian peace-keepers. S/PRST/1994/16, 7 April 1994.
[30] See Prunier, Gérard The Rwanda Crisis : History of a Genocide (Hurst and Company, London, 1995) p.234
[31] Rakiya Omaar and Alex de Waal Rwanda: Death, Despair and Defiance op. cit. p.665

will become untenable unless the Belgian contingent is replaced by another, equally well equipped contingent or unless the Government of Belgium reconsiders its decision to withdraw its contingent.[32] The Belgian Government similarly expressed its view that the continuation of the UNAMIR operation had 'become pointless within the terms of its present mandate'.[33] The situation spun out of control as UNAMIR was repeatedly weakened, first by the withdrawal of the Belgians, who had openly advocated a complete withdrawal of the mission, and then by the limited response of participating nations. With the notable exception of Ghana, governments instructed their UNAMIR contingents to protect themselves at all costs, even if that meant standing by while lightly armed, drunken thugs hacked women and children to death.[34]

Reduction of the UNAMIR force

On 15th April 1994, the Minister for Foreign Affairs of Belgium requested that the Council instruct the United Nations Secretariat and the Force Commander of UNAMIR to release the Belgian contingent immediately.[35] Despite the Secretary-General's earlier requests that Belgian troops leave their heavy weaponry on withdrawal, the contingent left with all its weaponry.

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[32] Letter dated 13th April 1994 from the Secretary-General to the President of the Security Council concerning developments which may necessitate the withdrawal of UNAMIR (The UN and Rwanda, 1993-1996 ,op.cit. Text of Documents, Doc.45).

[33] Letter from the Permanent Representative of Belgium to the United nations addressed to the President of the Security Council, stating the view of the Belgian Government that it is imperative to suspend the activities of UNAMIR forces without delay. UN Doc.S/1994/430, 13 April 1994.

[34] Feil, Scott R. Preventing Genocide : How the Early Use of Force Might Have Succeeded in Rwanda op. cit.

[35] UN Doc. S/1994/446, 15 April 1994.

Throughout this period, UNAMIR continued attempts to secure a cease-fire, through contacts with representatives of the RGA and the RPF, in the hope that this would lead to political efforts to return to the peace process.[36]

However, the security situation in Rwanda continued to deteriorate. Bangladesh, which provided the largest contingent to UNAMIR lamented the shortage of necessary equipment, weapons and ammunition to protect its troops. It questioned whether UNAMIR was serving any useful purpose in the circumstances.[37]

Despite all these calls for the withdrawal of UNAMIR and in light of the tragic developments with drastic implications for peace, security and stability in the region, regional pleas were made for the reinforcement and retention of the mission. President Museveni of Uganda, for example, urgently requested the Council on 21st April to allow UNAMIR maintain its presence in Rwanda.[38] On 13thApril, Nigeria, a temporary member of the Security Council, presented a draft resolution on behalf of the UN's Non-Aligned caucus, calling for UNAMIR's size and mandate to be expanded. It also pointed out that the concern of the Council should not only be limited to the security of foreigners, but should be extended to include protection of Rwandese civilians.[39] However, in the "stampede to withdraw", the Nigerian draft resolution was not even tabled. OAU Secretary-General Salim Salim also appealed to the UN to continue its efforts in Rwanda,

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[5] Special Report of the Secretary-General on UNAMIR, containing a summary of the developing crisis in wanda .

[7] Letter from the Permanent Representative of Bangladesh to the United Nations addressed to the President f the Security Council, assessing the risks to Bangladeshi troops serving in UNAMIR. UN Doc. /1994/481, 21 April 1994.

[8] UN Doc S/1994/479, 21 April 1994.

[9] Rwanda: The Preventable Genocide Report by the International Panel of Eminent Personalities created y the OAU to investigate the 1994 Genocide in Rwanda and the Surrounding Events, 1998. [ttp://www.pbs.org/wgbh/pages

stressing that a withdrawal of the UN mission might be interpreted by African countries as a sign of indifference or lack of concern for the African tragedy.[40]

After seeking further instructions from the Security Council on the next step, the Secretary-General was asked to formulate several options for consideration. In an attempt to integrate the various positions put forth concerning UNAMIR, the Chief Executive came up with three options. The first option called for immediate and massive reinforcement of UNAMIR and a change in its mandate so that it would have the equipment and the authorization to coerce the opposing forces into a cease-fire. This option implied intervention between the armies, rather than the maintenance or increase of troop strength in order to protect civilians. It revealed the secretariat's preoccupation with the civil war.[41] The second option suggested a more limited role for UNAMIR, under which its personnel would be reduced to approximately 270. Under the third option, the complete withdrawal of UNAMIR was suggested.[42]

The Secretary-General, in his report, failed to recognize the organized and systematic nature of the violence in Rwanda. Instead, he saw anarchy and spontaneous slaughter by 'unruly members of the Presidential Guard'. As such, his options failed to stress on the need to stop the massacre of the civilians and focussed instead on the less important (even though extremely urgent to UNAMIR) need, to secure a cease-fire.

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[40] OAU Secretary-General quoted in Rakiya Omaar and Alex de Waal Rwanda: Death, Despair and Defiance op.cit. p.687.

[41] Special Report of the Secretary-General on UNAMIR, containing a summary of the developing crisis in Rwanda and proposing three options for the role of the United Nations in Rwanda.S/1994/470, 20 April 1994

[42] Ibid.

The Secretary General's report and earlier letters to the Security Council[43] had expressed their doubt over whether UNAMIR was capable 'of performing the task for which it was sent'. These sentiments later permeated the Security Council in its course of decision making over which option was best. As a result, the Council's decision was taken in the context of a situation which it depicted as a civil war with related 'mindless violence', rather than organized genocide, accompanied by a smaller civil war.[44]

In its Resolution 912 adopted on 21 April, the Council, 'appalled at the ensuing large-scale violence in Rwanda which had resulted in the deaths of thousands of innocent civilians, including women and children', chose the Secretary–General's second option and adjusted the UNAMIR mandate accordingly.[45]

The Operation's troop strength was reduced to 270 and its mandate adjusted to allow it to act as an intermediary between the parties in an attempt to secure their agreement to a cease-fire; to assist in the resumption of humanitarian relief operations and to monitor and report on developments in Rwanda, including the safety and security of the civilians who sought refuge with the Mission.[46]

However, UNAMIR continued to report strong evidence of preparations for further massacres of civilians in Kigali. There were, at the time, large concentrations of civilians without adequate protection, and as many as 30, 000 displaced persons had taken refuge in the city's public places and religious sanctuaries.

These developments raised serious questions about the viability of the revised mandate. In particular, it had become clear that the new mandate did not give UNAMIR

[43] See Letter from the Permanent Representative of Bangladesh to the UN and Letter from the Permanent Representative of Belgium to the UN, op. cit)
[44] See Security Council Resolution adjusting UNAMIR's mandate and authorizing a reduction in its strength. UN Doc. SC Res 912(1994) 21 April 1994.

the power to take effective action to halt the continued massacres. At best, the mission could provide limited protection to small groups of threatened persons in Kigali. In a letter dated April 29th to the President of the Security Council, Boutros-Ghali finally realized that while the revised mandate was an adequate response to assisting the parties in agreeing to a cease-fire and a return to implementation of the Arusha accord, it was 'not one which enabled UNAMIR to bring the massacres under control'. [47] He therefore urged the Security Council to 're-examine the decisions which it took in resolution 912 and to consider again what action, including forceful action, it would take, or could authorize member states to take, in order to restore law and order and end the massacres'[48] which had killed an estimated 200 000 people in three weeks.

On 6th May 1994, the President of the Security Council, in a bid to find urgent and effective means of action that would stall hostilities and killings in Rwanda, requested the Secretary General to provide information on a possible expanded UN or international presence in Rwanda.[49] The Secretary General recommended that the Council authorize the establishment of UNAMIR II – a force numbering 5,500 troops with an expanded mandate. The Mission would support and provide safe conditions for displaced persons and other groups in need, and provide security to humanitarian agencies to assist with the distribution of relief supplies. The rules of engagement for the force would not include enforcement action as provided by Chapter VII of the Charter, but would depend on

[45] Ibid.
[46] Ibid.
[47] UN S/1994/518, 29 April 1994.
[48] Ibid
[49] See UN Doc. S/1994/546, 6 May 1994

deterrence to carry out its tasks.[50] The Secretary-General further urged member states to make bilateral arrangements in order to facilitate quick matching of troops with equipment and transport that UNAMIR II would require.

Without bilateral or other arrangements already in place, it was impossible for the UN to envision a rapid deployment of troops. Such arrangements would need time to be negotiated. Further, the need to match troops with equipment before deployment, being a complicated task, would also require some time. All these factors notwithstanding, the UN expected, with the co-operation of member states, to be able to effectively address the crisis in Rwanda through UNAMIR II.

On 17th May 1994, the Security Council adopted resolution 918 (1994). Acting under Chapter VI of the UN Charter, the Council expanded the original UNAMIR mandate to contribute to security and protection of displaced persons, refugees and civilians at risk and humanitarian areas, and to provide security and support for the distribution of relief supplies and relief operations. Acting under Chapter VII of the Charter, the Council imposed an arms embargo on Rwanda.[51] While the new mandate provided for the protection of non-combatants, it did not authorize UNAMIR intervene forcefully to halt the massacres.

Moreover, the embargo was not accompanied by concrete proposals to implement it or enforce its compliance by UN member states, although, as with previous embargoes, a committee was established within the UN bureaucracy in New York. Consisting of all the members of the Security Council, its mandate was to monitor implementation of the

[50] Report of the Secretary-General on the situation in Rwanda, noting that for UNAMIR to provide safe conditions for persons in need and to assist in the provision of humanitarian assistance, the mission would need to be expanded to at least 5 500 troops and be rapidly deployed. UN Doc. S/1994/565, 13 May 1994.
[51] S/RES/918 (1994), 17 may 1994

resolution and recommend " appropriate measures in response to violations of the embargo". By any standard, this committee remained completely inert for the embargo's duration.[52]

UNAMIR II

The deployment of UNAMIR II proved to be a very difficult process. There was a general fatigue on the part of the international community regarding participation in international peace-keeping operations. Of particular concern between 1993 and 1994 to the UN and major powers was the Yugoslavia crisis. Immersed in efforts aimed at devising a solution to the violence in that eastern European country, the international community had no desire to get involved in another crisis. Furthermore, the willingness of member states to contribute troops and funding was declining. In this context, member states did not respond quickly to the Secretary-General's request for contribution of troops, equipment and airlift services to meet UNAMIR II's requirements.[53] Moreover, those member states which offered to provide troops did not possess certain essential equipment and the troops therefore could not be 'dispatched until the proper equipment' was 'provided by other governments'.[54]

On the other hand, bureaucratic delays within the UN secretariat compounded the problem.[55] One writer postulated that even if troops had been immediately available, the lethargy of the major powers would have hindered their use.[56]

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[52] Hiltermann, Joost R. 'Post-Mortem on the International Commission of Inquiry' at http//www.rwanda.Rwanda. genocide
[53] See generally, Power, Samantha 'Bystanders to genocide' op. cit.
[54] S/1994/640, 31 May 1994
[55] UN Yearbook, 1994 (UN Dept of Public Information, New York, 1995) p.310.
[56] Power, Samantha 'Bystanders to genocide' op. cit.

Although a number of Northern governments have been blamed, the US has been singled out for particular criticism concerning its delay and lack of political will in contributing towards UNAMIR. During this critical period, the White House was putting the finishing touches on Presidential Decision Directive 25 (PDD-25), setting stringent standards for US support for UN peacekeeping operations, which many in Washington felt were proliferating uncontrollably.[57] PDD-25 ended up being the biggest obstacle to a speedier response.[58] PDD-25 established strict conditions for US participation in United Nations and other peace operations and indicated that the United States would reduce its United Nations peacekeeping assessment from some 31 per cent to 25 per cent. PDD-25 also indicated that the US would wield its power on the Security Council to prevent the establishment of what it considered to be ill-defined and imprudent missions.

Under this policy, the US listed sixteen factors that policymakers needed to consider when deciding whether to support peacekeeping activities: seven factors if the US was to vote in the UN Security Council on peace operations carried out by non-American soldiers, six additional and more stringent factors if the US was to vote in the UN Security Council on peace operations carried out by non-American soldiers, six additional factors if US forces were to participate in UN peacekeeping missions, and three final factors if U.S. troops were likely to engage in actual combat. In the words of Representative David Obey, of Wisconsin, the restrictive checklist tried to satisfy the

[57] Hanley, Charles J. 'Indecision, Inertia blamed over genocide' *Daily Nation*, Friday, March 27, 1998, p.10
[58] "The Clinton Administration's Policy on Reforming Multilateral Peace Operations" *Executive Summary of Presidential Decision Directive* 25, May 1994, available on the Internet at <http://www.whitehouse.gov/WHEOP/NSC/html/documents/NSCDoc1>.

American desire for "zero degree of involvement, and zero degree of risk, and zero degree of pain and confusion".[59]

Under PDD 25, the US also argued with the UN over how much Washington should be paid for offering 50 Armoured Personnel Carriers (APCs) and other support.[60] It reluctantly agreed to provide the APCs – but insisted that they were not to be given, only rented! Further, they were not to be active duty vehicles, but taken from among army stocks of mothballed APCs. Taking them out of storage and getting the UN Department of Legal affairs to agree with the US State Department took three weeks. [61]

The Pentagon also argued over whether to supply combat boots to Ghanaian troops earmarked for Rwanda and recoiled at the thought of an all-at-once troop deployment, saying it might take a month to ship US armoured personnel overseas.[62]

Meanwhile, the apocalypse progressed. The UN Secretary General regretted that 'almost two months since the violence exploded, killings still continue'.[63] He remonstrated with the international community over the state of affairs in Rwanda in his report of 31st May 1994:

> 'The delay in reaction by the international community to the genocide in Rwanda has demonstrated graphically its extreme inadequacy to respond urgently with prompt and decisive action to humanitarian crises entwined with armed conflict...The international community appears paralysed in reacting almost two months' after the carnage broke out 'even to the revised mandate established by the Security Council...Our readiness and capacity for action has been demonstrated to be inadequate at best, and deplorable at worst, owing to the absence of collective political will.'[64]

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[59] Quoted in Power, Samantha 'Bystanders to Genocide'. Op. cit.
[60] Ed Cairns 'Rwanda' in Learning the Lessons: UN Interventions in Conflict Situations (Community Aid Abroad, Public Policy and Education Section, Sydney, 1995) pp.88-95, p.92.
[61] Interview with a US State Department Official, Washington DC (4 September 1994) quoted in Prunier, Gérard The Rwanda Crisis : History of a Genocide op.cit. p.275)
[62] Hanley, Charles J. Note 46.
[63] UN Doc. S/1994/640, 31 May 1994
[64] Ibid

According to the OAU Panel of Eminent Personalities, UNAMIR II now existed,

> ' an apparent victory for common sense. In fact, it existed on paper only. Nothing had changed, as insiders had predicted from the first. Nothing was going to happen, nothing...because this was a document that looked good on paper but never had much of a chance of being implemented. Member States were not going to provide the resources to carry out that plan'.[65]

Secretary General Boutros-Ghali reminded the Council that the concept of the operation and the various deployment scenarios were predicated on the assumption that the required troops with full equipment would be made available without delay. It was clear to him that unless member states demonstrated the determination to take prompt and decisive action, UNAMIR II would be unable to implement its mandate or to have the impact required to spare the Rwandese people further suffering.[66] In a sense, he therefore acknowledged that the main obstacles to the operation were centred on the capacity and readiness of the member states to undertake its tasks.

Operation Turquoise

With the deployment of UNAMIR II effectively stalled, the Secretary General informed the Security Council that UNAMIR might not be in a position to undertake fully the tasks entrusted to it under the expanded mandate for another three months. He stressed that 'in the conditions prevailing in Rwanda, additional troops can only be deployed once the necessary equipment to support them is on the ground and after the troops have been trained to use the equipment with which they may not be familiar.'[67] Further, it was regrettable that although governments were expected to offer fully trained and equipped units for United Nations operations, almost all offers received were conditional in one way or another.

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[65] See Rwanda: The Preventable Genocide op.cit.
[66] The UN and Rwanda, 1993-1996, p.52

The difficulties that the Secretariat faced in securing resources for UNAMIR's expanded mandate showed that there was no guarantee that the stipulated conditions could be met. Even if they could, protracted negotiations would be required, not only with the governments making the conditional offers, but also with other member states. Regrettably still, none of those governments possessing the capacity to provide fully trained and equipped military units offered to do so.[68] The Secretary General was therefore faced with the task of matching African troops with Western equipment; a time consuming activity that led to further delays in deployment.

In the light of these circumstances, the Secretary-General requested the Security Council to consider the offer made by the government of France, to undertake, subject to the Council's authorisation, a French-commanded multinational operation, in conjunction with other member states, under Chapter VII of the Charter, for the protection and security of displaced persons and civilians at risk in Rwanda.[69] In its letter of 20th June addressed to the Secretary- General, [70] France stated that the cease-fire was not being respected and the massacres of civilians continued on a large-scale. It was willing, along with Senegal, to send a force into Rwanda immediately pending the arrival of the expanded UNAMIR and with the same objectives assigned to UNAMIR.

Even though France did not request for a mandate to forcibly put a stop to the advancing apocalypse (indeed, it sought to work within UNAMIR's mandate), it did,

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[67] UN Doc. S/1994/728, 20 June 1994

[68] Ibid. As far as some indusrialized countries were concerned, for example, failure to contribute to UNAMIR II was not a question of lack of capacity, as collectively or individually, several UN members had the means to intervene decisively. Indeed, France and Belgium had demonstrated this by their efficient airborne operations to evacuate expatriates, shortly after the genocide erupted.

[69] See Letter dated 20 June 1994 from the Permanent Representative of France to the United Nations addressed to the Secretary General, requesting adoption of a resolution under Chapter VII of the Charter as a legal framework for the deployment of a multinational force to maintain a presence in Rwanda until the expanded UNAMIR is deployed. UN Doc. S/1994/734, 21 June 1994.

nonetheless, ask for a mandate to act under Chapter VII of the Charter until UNAMIR was deployed. On 21st June, French Prime Minister, in a parliamentary speech, set five conditions which were to be fulfilled by the French force, if Security Council authorisation was given. The army was to get a UN mandate under which a clear time-limit to the intervention was to be set and stuck to; there was to be no in-depth penetration of Rwanda, the operation being carried on from just outside its borders; the operation was to be purely humanitarian and have no exclusively military component, and allied troops were to be involved – France was not to operate alone.[71] These conditions while informing the international community about the neutrality and credibility of the operation, also served to give the Security Council a framework for action.

Responding expeditiously, the Security Council, on 22nd June, approved the operation by resolution 929 (1994). Acting under Chapter VII , the Council authorized member states "co-operating with the Secretary General" to establish a temporary operation under French command and control, "using all necessary means to achieve the humanitarian objectives" of UNAMIR II.

The words 'all necessary means' meant that the multinational force was empowered to use force to establish secure conditions for humanitarian relief. The Council also stressed the humanitarian aspect of the intervention in a bid to avoid, as will be shown later, the complications that arose in Somalia. Authorisation was therefore conditioned by "stressing the strictly humanitarian character of the operation" which was

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[70] Ibid

[71] See Prunier, Gérard 'The Rwanda Crisis: History of a Genocide' op.cit. p.287 The condition on no in-depth penetration of course made no practical sense and could not be adhered to. As for the last option, Paris went ahead without being able to fulfil it. But the three others were respected.

to be "conducted in an impartial and neutral fashion" and was not to "constitute an interposition force between the parties".[72]

Although the United Nations gave the force its mandate, it neither deployed nor commanded the troops which were sent to fulfil it. Further, the costs of the Operation were to be borne by the countries supplying the troops. That same day in Rwanda, French and Senegalese troops begun Operation Turquoise. By early July, French troops numbered 2,330 and Senegalese thirty-two. Troops from other African states joined the operation later that month.[73] In its 1st July 1994 letter, France announced its decision to establish a safe humanitarian zone in south-west Rwanda. An essential element in providing security for the population would be stabilizing the movement of refugees and displaced persons because the displacement of the target population gave the killers the opportunity to select victims as they passed through roadblocks.

Operation Turquoise's Limitations

While the mandate given to Operation Turquoise was mainly humanitarian, the mission had trouble in effectively performing the humanitarian component. On July 1994, France repeatedly alerted the Security Council to the rapidly deteriorating situation in Rwanda as a result of the massive exodus of the civilian population to Zaire and the safe humanitarian zone.[74] France also confessed that at the humanitarian level, the force was not sufficiently large to cope with the massive flows of refugees. However, it declared that Operation Turquoise had successfully ensured the security of the area assigned to it without major difficulties.[75]

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[72] S/RES/929 (1994), 22 June 1994, Preamble.
[73] The UN and Rwanda, 1993-1996 op.cit. p 55.
[74] See Security Council meeting, no.3405.
[75] See Reports on Operation Turquoise (August and September) in Yearbook of the UN, 1994 op.cit. p 291.

Nonetheless, even as far as the provision of security is concerned, the operation has been criticised for offering security only to those who were in the least danger. That is, in large refugee camps. Operation Turquoise did not completely stop the slaughter which went on unabated in Kibuye where they were not present, and remained sporadic even in Cyangugu and Gikongoro where French troops were too scattered to cover the whole ground.[76] When they found small pockets of hunted Tutsi, the French would often tell them that because of their present lack of lorries, they would 'return with reinforcements'.[77]

The operation not only centred on one aspect of its mandate (security) but also lacked the right means to effectively address it. The lack of lorries, for example, was evidence of the Operation's limited capacity. There were too many useless armoured cars and not enough trucks because the whole operation had been conceived as a fighting one, whereas it was mainly faced with a gigantic humanitarian problem.[78]

To compound matters, the population upheaval benefited the extremist leaders, who hid in the mass of refugees, left the country with them and later seized control of the refugee camps in Zaire. They were supported (unintentionally, but not unknowingly) by aid from humanitarian agencies and began to train forces and plan for a counter offensive to regain the country. The humanitarian disaster that followed dwarfed the resources of aid agencies and created a festering situation in the refugee camps that was difficult to resolve.[79]

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[76] Prunier, Gérard, op.cit p.261.
[77] 'Five Tutsis hacked to death in Goma' *AFP Dispatch*, 21 July 1994, p.5
[78] Prunier, Gérard, 'The Rwanda Crisis: History of a Genocide' op.cit. p.293

Completion of Operation Turquoise

On 18th July 1994, the RPF, having established military control over most of Rwanda, declared a cease-fire, effectively ending the civil war.

Although more than 5 000 troops had been pledged to UNAMIR II and were awaiting deployment, less than 500 UNAMIR troops were on the ground in Rwanda as of 25 July, apart from a number of military observers. Of 4 400 troops offered by eight African countries, nearly 3 000 were still in need of equipment.[80]

Nevertheless, with relative calm returning to Rwanda following the 18th July cease-fire, UNAMIR assumed on 21st August full responsibility for the zone controlled by "Operation Turquoise". It also co-ordinated the government's take-over of the south-western zone. The rapid reinforcement of UNAMIR in early August contributed to the improvement of the security situation. Its activities shifted from purely military security related tasks to supporting humanitarian operations and facilitating the return of refugees and displaced persons. By 3rd October, the mission's troop strength was 4,270 all ranks and was expected to exceed its authorized level.[81] In a report by the Secretary-General on 6th October, 'the remaining deployment to bring troop strength to the authorized level was expected to be completed within weeks'.[82]

The Deployment of UNAMIR II had taken nearly five months to be complete and occurred at the time when the hurricane of death, which had crushed 80 percent of its

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[79] See Feil, Scott R. Preventing Genocide : How the Early Use of Force Might Have Succeeded in Rwanda op. cit.

[80] Letter dated 1 August 1994 from the Secretary General to the President of the Security Council reporting his urgent request to governments to provide the reinforcements and equipment necessary to bring UNAMIR to the strength authorized by the Council in resolution 918 (1994) UN Doc. S/1994/923, 3 August 1994.

[81] See Progress report of the Secretary-General on UNAMIR for the period from 3 August to 6 October 1994 S/1994/1133, 6 October 1994.

victims in about six weeks between the second week of April and the 3rd week of May, had abated. If probably around 800 000 people were slaughtered during that short period, the daily killing rate was at least five times that of the Nazi death camps.[83] Furthermore, 500,000 Rwandans were displaced within the country; and over two million Rwandans had fled to surrounding countries. Therefore, more human tragedy was compressed into three months in Rwanda than occurred in four years in the former Yugoslavia.[84]

HUMANITARIAN INTERVENTION IN SOMALIA

Introduction

Under Resolution 794 of 3rd December 1992, the Security Council invoked Chapter VII of the Charter of the UN to authorize the establishment of a Unified Task Force (UNITAF), under US command and control, 'in order to establish a secure environment for humanitarian relief operations in Somalia'.[85]

This resolution was unprecedented in two important ways. First, this was the first time that an unambiguously internal and humanitarian crisis had been designated as a threat to international peace and security, thus justifying peace-enforcement measures. Secondly, with this and subsequent resolutions, the UN dropped the pretence that its involvement in Somalia arose out of an invitation from the government. For the first time,

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[82] Ibid.
[83] Prunier, Gérard, 'The Rwanda Crisis: History of a Genocide' op. cit. p.261.
[84] Feil, Scott R. Preventing Genocide : How the Early Use of Force Might Have Succeeded in Rwanda op. cit.
[85] UN. Doc. S/RES/794 (1994), 3 December 1992 par.10.

statelessness was acknowledged to be a threat to an international society comprised of sovereign states.[86]

Having no model to follow in its efforts to bring humanitarian assistance and peace to the people of Somalia, the UN was faced with an evolving series of unprecedented and usually complex situations that raised fundamental questions about peace-keeping, peace enforcement, preventive diplomacy and post conflict peace-building.

Background

By 1989-90, Somalia, comprised of a single ethnic group sharing the same religion, history and language, had split into heavily armed clans. The rebellion against President Siad Barre had evolved into open civil war, with the government's authority increasingly confined to Mogadishu. The fall of Siad Barre's government in early 1991 saw Somalia descend into anarchy, with the various clans fighting for control of territory and political influence.[87]

By the end of 1991, Mr.Ali Mahdi Mohamed and General Mohamed Farah Aidid, leading rival coalitions of political movements, had emerged as the main contenders for political power.[88] The continuing conflict and severe drought sparked a growing humanitarian emergency.

However, the international community at this time showed little real interest in events in Somalia. There were only limited peace initiatives in Somalia in 1991 and therefore, only limited information about the deteriorating situation. Moreover, there was

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[86] Mayall, James and Lewis , Ioan 'Somalia' in Mayall, James (ed) The New Interventionism : 1991-1994: United Nations Experience in Cambodia, Former Yugoslavia and Somalia (Cambridge University Press, Cambridge, 1996) pp.94 – 128, p.94.

[87] Bryce Hutchesson 'Somalia' in Learning the Lessons. UN Interventions op.cit. pp 96-99, p.96.

no resident UN mission in Somalia that would report on security concerns. On the international agenda at that time, the UN was pre-occupied with the situation in the Gulf. Also, the situation in the former Yugoslavia served to turn international attention away from what was a significantly deteriorating situation in Somalia. Further, at that time, discussion of the whole doctrinal question of the extent to which the international community could intervene in a state's internal affairs was still in the embryonic. The supposition was that there were no grounds to intervene unless the conflict was between states.[89]

Commencement of UN Involvement

On 15th January 1992, Somalia's interim Prime Minister appealed to the Security Council to convene and consider the "deteriorating situation in Somalia, particularly the fighting in Mogadishu" .[90] On 23rd January, the Security Council adopted its first resolution on Somalia, Resolution 733(1992), in which it urged all the parties to the conflict to cease hostilities and, acting under Chapter VII, imposed a "general and complete embargo on all deliveries of weapons and military equipment to Somalia".[91] The Resolution also called for UN humanitarian assistance. However, at this point, the international community did not immediately conclude that large-scale humanitarian intervention was the appropriate response.

Between 12th and 14th February 1992, consultations with Somali faction leaders were held at UN Headquarters in New York, during which they agreed to an immediate

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[88] S/1994/653, 1 June 1994 ,par.19. Report of the Commission of Inquiry established pursuant to resolution 885 (1993) to investigate armed attacks on UNOSOM II personnel.
[89] Ibid
[90] S/23445, 20 January 1992. Letter dated 20 Jan. 1992 from Somalia bringing the situation in Somalia to the attention of the security Council.
[91] S/RES/733(1992), 23 January 1992.

cease-fire.[92]However, both during the talks and subsequent to the signing of the pledges, hostilities on the ground in Mogadishu had continued. On 3rd March 1992, General Aidid and Mr.Ali Mahdi signed an agreement on a cease-fire in Mogadishu, to be monitored by the United Nations. While major fighting in the capital ended, sporadic violent incidents continued to obstruct humanitarian operations and fighting continued in many other parts of the country.[93]

Following further discussions, both General Aidid and Mr.Ali Mahdi signed agreements on 27th and 28th March, respectively, on mechanisms for monitoring the cease-fire and arrangements for equitable and effective distribution of humanitarian assistance in and around Mogadishu. These agreements specified that the UN would deploy fifty cease-fire observers in Mogadishu (twenty-five on each side of the divided city) and adequate security personnel for humanitarian relief operations.[94]

As a corollary, the Security Council, on 24th April, unanimously adopted Resolution 751 (1992), authorizing the establishment of the UN operation in Somalia (UNOSOM, later referred to as UNOSOM I) under which 50 UN observers were to be deployed to monitor the cease-fire in Mogadishu. The resolution also authorized the deployment of a security force to protect humanitarian relief activities.[95]

However, the Security Council stressed that a political solution to Somalia's crisis would have to be found if the root causes of the humanitarian emergency were to be dealt with effectively and therefore urged the Secretary General to continue his efforts to reconcile the factions. National reconciliation was therefore, from the beginning, an

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[92] See UN.Press Release 1HA/431, 12 Feb 1992 and UN Press Release 1HA/434, 14 Feb 1992.
[93] UN. Doc. S/23693, 11 March 1992.
[94] UN. Doc. S/23829, 21 April 1992 Report of the Secretary-General on the situation in
[95] UN. Doc. S/RES/751 (1992), 24 April 1992

integral part of UNOSOM's mandate. Nevertheless, the principal challenge for UNOSOM I was to contain the famine quickly and save the millions of people at risk of death. UN estimates by April 1992 indicated that as a result of the civil war and drought, 4.5 million people were threatened by malnutrition and related diseases and that between November 1991 and April 1993, as many as 300 000 persons had died and 1.5 million were particularly at risk.[96]

However, donor support was still falling far short of requirements and, without security, it was proving impossible to deliver adequate assistance to many parts of the country. In mid-1992 in southern Somalia, death rates were rising steadily. In July, the UN Secretary General, alarmed by the tragedy in Somalia, and the tendency of some member states to focus primarily on other crises, such as the one in the Balkans, urged the international community to focus more attention on Somalia and to strengthen UNOSOM and expand it to cover the entire country.[97] He stressed that 'while preoccupation with crises in other parts of the world was understandable, it was also the duty of the UN to live up to the situation in Somalia, where millions of people were facing the threat of death'.[98]While the appeal mobilized donors, the crisis continued to intensify, because the lawlessness, insecurity and violence prevented the delivery of much of the food aid in the pipeline.

Even though the operation had been established in April 1992, agreement on the deployment of a 500-strong infantry force was not reached until mid-August.[99] According

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[96] See Report of the Commission of Inquiry established pursuant to resolution 885(1993) to investigate armed attacks on UNOSOM II personnel, op.cit. par. 21).
[97] UN doc. S/24343, 22 July 1992. Report of the Secretary-General on the situation in Somalia, proposing the expansion of UNOSOM and the creation of four operational zones.
[98] Ibid
[99] See UN Document S/24451, Letter dated 12 August 1992 from the Secretary-General addressed to the President of the Security Council, 14 August 1992).

to Mayall and Lewis, there is no single explanation for the long delay in organizing the international response to the Somali crisis. In part, it was due to bureaucratic rigidity. In part, it was a consequence of logistical and financial constraints, which prevented some countries from responding rapidly, even when they had taken the political decision to do so. It was also because the situation lay so far beyond the experience of UN peacekeeping that had developed over the previous forty years. There were simply no precedents for deploying UN forces on a humanitarian rather than a peacekeeping mission when there was no government with which to negotiate and where the practical decision, therefore, was always going to be whether to appease those with the power on the ground or oppose them by force.[100]The UN preferred to use the former approach; which was in line with UNOSOM's strategy. Indeed, while the need to engage international military personnel to provide security for relief operations had long been a United Nations objective, their deployment could not take place until the consent of the *de facto* Somali political leaders was given in August 1992.

In an effort to break this deadlock, and also as a result of the alarming deterioration of the humanitarian situation, the UN Security Council voted Res. 775 (1992) which was to provide for an increase in the number of observers and the creation of four 'zones of intervention'. The resolution called for a humanitarian airlift but remained rather vague as to what the contents of the 'intervention' should be. The UN was highly cautious of full-scale involvement.[101]

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[100] Mayall, James and Lewis Ioan 'Somalia' in Mayall, James (ed) The New Interventionism : 1991-1994: UN experience in Cambodia, former Yugoslavia and Somalia op.cit. p.109.

[101] Gérard Prunier Somalia : Civil War, Intervention and Withdrawal 1990-1995 WRITENET Country Papers Http://www.unhcr.ch/refworld/country/writenet.

UNOSOM comprised only 54 military observers and 893 troops at its height[102] and the force never managed to deploy beyond the harbour and airport of Mogadishu due to lack of consent of the de facto Somali political authorities. There was little the Mission could do given that the country's Government had collapsed and that the warring factions routinely attacked UN peacekeepers. As the humanitarian crisis worsened, the peace-keeping force was unable to fulfil its mandate of monitoring the cease-fire, protecting United Nations personnel, and safeguarding its relief assistance activities.[103]

UNITAF

The ongoing warfare, and especially the recalcitrance of the major factions in Somalia in failing to allow for the secure delivery of humanitarian assistance, led to a fundamental change in the international community's approach to the Somali crisis. At an informal meeting on 25th November 1992, the Council agreed that the situation had become intolerable and that it was doubtful whether the methods employed by the UN to date would suffice to end the suffering of the civilian population. The same day, the US expressed its willingness to take the lead in organizing and commanding a military operation to ensure the delivery of relief supplies to Somalia if the Security Council authorized member states to take such action.

The reason which finally prompted US President Bush to announce a major American military intervention was said to be related to securing the distribution of humanitarian aid in the worsening crisis and there was no reason for believing that this

[102] UN Peace-Keeping: 50 Years (UN Dept. of Public Information, New York, October 1998) p.28
[103] See UN Document S/RES/751;UN Doc. S/RES/767(1992), 27 July 1992 and UN Doc. S/23829, Report of the Secretary-General on the situation in Somalia, 21 April 1992, paras.22-27 (outlining the initial concept of operations).

was not the case. But there were several other considerations which contributed to this decision.

First, with the end of the Cold War, large spending cuts were unavoidable in a now oversized military industrial establishment. Secondly, there was an image component: Desert Storm, although very successful, had also drawn a great deal of criticism. By contrast, a large military intervention in order to save starving children in an under-developed African country would be a very good image-building device in a predominantly Muslim area where the U.S and the West in general were far from being liked. Thirdly, the US Army, after some initial reluctance, was finally happy to test on a real scale, real life basis the efficiency of its Rapid Defense component.[104]

It has also been postulated that the public concern created by the media partly accounted for the intervention. Schraeder states that extensive media coverage of the tragic events in Somalia played an important role in generating popular interest, which, in turn, led to growing public demands for changes in US policy.[105]

The US's offer was predicated on the operation being limited in three important respects: first, its function was to be confined to securing the effective distribution of food to those in need; second, its geographical scope was to be limited to the most devastated parts of the country in and around Mogadishu, Berbera and Baidoa; and third, the mission was to be completed preferably before or very soon after the inauguration of the new president in January 1993. Providing these conditions were met by the operation, the US favoured intervening with sufficient force and firepower to overawe any Somali

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[104] Gérard Prunier Somalia : Civil War, Intervention and Withdrawal 1990-1995 op. cit.
[105] Schraeder, Peter J. quoted in Hippler, Jochen The UN and the Slow Death of Humanitarian Interventionism at Http://www.jochen-hippler.com/

opposition and minimize casualties.[106] The brevity of the US stay and the narrowness of the mission were emphasised in order to gain support for the proposal from the international community and in particular, from the UN Security Council.

On 29 November 1992 the Secretary-General, in accordance with a request by the Security Council during its meeting of 25th November 1992, presented the Council with five options on how to respond appropriately to the humanitarian crisis The Council selected the fourth option under which a country-wide enforcement operation empowered by the Security Council but undertaken by a group of member states was recommended. Unlike UN peace-keeping missions, UNITAF was not financed by mandatory assessments on all member states or by voluntary contributions following the approval of their budgets by the General Assembly. The costs of the Mission were borne by the countries supplying troops and by countries which contributed to a voluntary trust fund created for UNITAF by the Security Council.

The purpose of the operation would be to resolve the immediate security problems in Somalia through, *inter alia,* disarming irregular armed bands and bringing the heavy weapons of the organized factions under international control. Once this was accomplished, the military operation would be replaced by a conventional UN peace-keeping operation.[107]

It was felt that the uniqueness of the deteriorating and complex challenge of mass starvation amidst total anarchy required an immediate and exceptional response.[108] The breakdown of political authority in Somalia had led to crimes against humanity. In the

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[106] Mayall, James and Lewis Ioan 'Somalia' in Mayall, James (ed) The New Interventionism : 1991-1994: UN experience in Cambodia, former Yugoslavia and Somalia op.cit. p.111.

[107] UN.Doc.S/24868, 30 Nov. 1992. Letter dated 29 November 1992 from the Secretary-General to the President of the Security Council presenting five options for the Security Councils consideration.

absence of legally sanctioned authorities or state structures to provide legitimate consent, it was necessary to have the actions of the international force exclusively governed by the UN under Chapter VII of the UN Charter. This would give the intervening force power to compel compliance with Security Council Resolutions.[109]

In its Resolution 794 (1992), the Security Council welcomed the offer by the US and authorized "the Secretary-General and member states to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia".[110] The key words, "all necessary means" meant that the multinational force was authorized to use force to establish secure conditions for humanitarian relief, although the resolution made no specific reference to disarmament or demobilization. As a corollary, UNITAF pursued disarmament on an *ad hoc* basis. While the technical details of the whole operation were very carefully thought out, its general policy framework was completely neglected.

Within days of the passage of Security Council Resolution 794, the first of what would become over 27,000 U.S. troops arrived to provide a modicum of security to help sustain civilians. They were augmented by 10 000 soldiers from twenty-two other countries.[111] At its peak strength, UNITAF consisted of approximately 37,000 troops, including about 8 000 on ships offshore. The largest contingent by far was provided by the U.S, with peak strength of about 28 000 marines and infantry. These forces rapidly spread out across the central and southern parts of the country to secure ports and airports, provide protective convoys for humanitarian relief supplies and guard food

[108] Thakur, R 'From PeaceKeeping to Peace Enforcement : UN Operation in Somalia' *The Journal of Modern African Studies* Vol 32:3 (1994) pp 387-410:398

[109] Clerk, W. 'Failed Visions and Uncertain Mandates' in Clarke W. and Herbs J. (eds)Learning from Somalia : The Lessons of Armed Humanitarian Intervention (Westview Press, Colorado, 1997) pp 3-19:10

distribution centers. The focus was on southern and central Somalia, the area worst affected by the famine.

Throughout central and southern Somalia, looting, extortion and attacks on relief workers dropped sharply. The improved security conditions made it possible for UN agencies and NGOs to strengthen their staff and programs in Somalia. Most observers concluded after a few weeks, with a minimum of incidents, that UNITAF had succeeded in opening up the supply routes and getting food through to most of the needy areas in Somalia.[112]

Taking advantage of the precarious lull in the fighting, the Secretary General opened a peace conference in early January of fifteen Somali faction leaders. Meeting in Addis Ababa, they reached an agreement to cease hostilities, demobilize their militias, hand over heavy weapons to a cease-fire-monitoring group constituted by UNITAF and UNOSOM, and prepare for a conference on national reconciliation.The expectation was that UNITAF would now be involved in disarmament in one way or another.

By January 1993, some progress had been made towards voluntary disarmament. However, it fell far short of the goals set in the Addis Ababa agreements. While some heavy weapons were placed in storage sites, and were open to inspection by UNITAF and UNOSOM I, these remained under the control of the factions. Contrary to what had been believed, faction leaders were not 'clan leaders' . This approach, in which faction leaders were accepted as representatives of the Somali peoples amounted to political improvisation - a process which not only failed to produce legitimate political outcomes,

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[110] UN. Doc. S/RES/794(1992), 3 Dec. 1992.
[111] Weiss, Thomas et. Al (eds.) The UN and Changing World Politics op.cit p.79
[112] See Patman, Robert G. 'The UN Operation in Somalia' in Thakur, Ramesh and Thayer, Carlyle (eds.) UN Peacekeeping in the 1990s (Westview Press, Boulder, Colorado, 1995) pp.90 – 105, p.94.

but also proved to be counter-productive to the UN Mission. The improvisation took place without input from persons well informed about Somali politics. As a result the outcomes of UN peace conferences and initiatives were vitiated form the start because they did not respect the Somali ways of peacemaking (*shir*) and tried to push quickly arranged 'solutions' without really considering how representative the participants were or what motivated them. The UN was struggling to achieve too much, too quickly and by the wrong methods. [113]

TRANSITION FROM UNITAF TO UNSOSOM II

In February 1993, the calm that had initially followed UNITAF's intervention begun to break down as renewed outbreaks of fighting in Mogadishu and southern parts of Kismayu took place. The deteriorating security situation jolted the UNITAF troops into patrolling more aggressively, disarming townsmen who openly carried weapons and raiding one of the most notorious arms markets in Mogadishu. One of Aideed's 'encampments was destroyed and a contingent of General 'Morgan's (son-in-law of former President Siad Barre and leader of one of two rural factions of Aideed's Somali Patriotic Movement) was attacked to prevent it from gaining control of Kismayu.

Nevertheless, UNITAF neither considered these actions as a central feature of its mandate, nor made them form part of a comprehensive disarmament plan. In fact a controversy between the US and the UN over the scope of disarmament had arisen; the US was not prepared to undertake the complete disarmament that the UN envisaged[114] for it did not interpreted UNITAF's mandate as extending to the disarmament of armed gangs, the confiscation of heavy weapons or forceful action to stop outbreaks of

[113] Gerard, Prunier Somalia:Civil War. Intervention and Withdrawal 1990-1995 op. cit.

interfactional fighting. The general wording of the mandate in resolution 794(1992) which made no specific reference to disarmament or demobilization and referred only to the establishment of a "secure environment" for humanitarian relief was interpreted by the US command of UNITAF to mean the securing of ports, airports, warehouses, feeding centers and roads to ensure the unimpeded delivery of relief supplies.[115]

However, the security situation in Somalia remained volatile and attacks on personnel involved in humanitarian work continued.[116] Meanwhile, the US was anxious to withdraw from Somalia and hand over responsibility to the United Nations. It felt that its intervention had been effective in averting disaster, and that with the relative improvement in the security situation and the provision of much-needed food, medicines and other vital necessities to Somalis, its essentially humanitarian mission was accomplished. Unlike the UN, the US government did not seem to have any long-term strategy for Somalia.[117]

Nonetheless, it was clear that while there was an improvement in humanitarian conditions, little progress was made on restoring law and order or disarming the Somali factions. In his letter to President Bush on 8th December, the Secretary-General asserted that UNITAF was to ensure that the heavy weapons of the organized factions were brought under international control and that the irregular gangs were disarmed. Without this action he did not believe that it would "be possible to establish the secure environment called for by the Security Council resolution or to create conditions in which

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[114] See Jarat Chopra, Åge Eknes and Toralv Nordbø, "Fighting for Hope in Somalia," *Peacekeeping and Multilateral Operations*, No. 6, Norsk Uterikspolitisk Institutt, Oslo, 1995 p.42.
[115] The UN and Somalia, 1992-1996, op.cit. p.41.
[116] See Report of the Commission of Inquiry established pursuant to resolution 885(1993) to investigate armed attacks on UNOSOM II personnel, op.cit. par 41.

the United Nations' existing efforts to promote national reconciliation could be carried forward and the task of promoting humanitarian activities, safely transferred to a conventional UN peace-keeping operation.[118] Therefore, reporting to the Security Council on 3rd March 1993, the Secretary-General was of the opinion that "the effort undertaken by UNITAF to establish a secure environment in Somalia is far from complete and in any case has not attempted to address the situation throughout all of Somalia".[119]

In light of this, UNITAF could not, as originally envisaged by the Security Council, hand over operational responsibility to a new UN operation mandated solely for traditional peacekeeping. During the Secretary-General's discussions with United States authorities, it was suggested that the mandate of UNOSOM be enlarged in conceptual and other terms, once UNOSOM took over from UNITAF, and that it cover the whole territory of Somalia. The US envisaged that the mandate, concept of operations, level of armament and rules of engagement of the new UNOSOM would be little different from those of UNITAF; The approach of a peace-enforcement operation, the first such operation under UN command, would require, in the Secretary-General's view, a further decision by the Security Council under Chapter VII of the Charter and would be analogous to the fifth option for which he had expressed preference in his 29th November

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[117] See Cheney, Dick *Agence France Presse* 20 Dec. 92 who stated that " The main preoccupation of the UN is to stay out of trouble, ensure distribution of humanitarian aid pack up and go home as soon as possible"

[118] Letter dated 8 December 1992 from the Secretary-General to President Bush of the United states discussing the establishment of a secure environment in Somalia and the need for continuous consultations, quoted in UN Doc. S/24992, 19 Dec. 1992 – Report of the Secretary-General submitted in pursuance of paragraphs 18 and 19 of Security Council resolution 794(1992), proposing that UNITAF extend its operations to the whole of Somalia and disarm the factions before handing over operational responsibility to a new United nations peace-keeping operation)..

[119] See further, Report of the Secretary-General submitted in pursuance of paragraphs 18 and 19 of resolution 794(1992), proposing that the mandate of UNOSOM II cover the whole country and include

letter.[120] The mandate would include disarmament, which would be enforceable where the factions failed to comply with timetables and modalities established under the Addis Ababa agreements of January 1993. In terms of disarmament, although the mandate given to UNOSOM was more specific than that given UNITAF, the mission soon focussed entirely on this role, at the expense of other objectives for which the intervention had been authorized.[121] Further, the mission used the same approach to achieve all its objectives. Indeed, UNOSOM now had a very wide mandate, encompassing political objectives, most of which required patience and cooperation to implement, and not forceful intervention.

UNOSOM II

On 26th March 1993, the Security Council unanimously adopted Resolution 814 (1993).[122] Acting under Chapter VII of the Charter, the Council decided to expand the size of UNOSOM and widen its mandate in accordance to the Secretary General's recommendations. On the Somali political front, UNOSOM also appeared to receive national support. At a reconciliation conference in Addis Ababa on 27th March, leading warlords and representatives of clan movements committed their organizations to 'complete' disarmament and urged that UNITAF/UNOSOM should apply 'strong and effective sanctions against those responsible for a violation of the cease-fire agreement of January 1993'.[123]

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enforcement powers under Chapter VII of the Charter. UN.Doc S/25354, 3 March 1993, and addenda: S/25354/Add.1, 11 March 1993, and S/25354/Add.2, March 1993.)

[120] See Letter dated 29 November 1992 from the Secretary General to the President of the Security Council presenting 5 options for the Security Council's consideration UN Doc. S/24868, 30 Nov.1992

[121] Forceful disarmament soon jeopardized the lives of the very civilians on whose behalf the humanitarian intervention was to be conducted.

[122] UN.Doc. S/RES/814(1993), 26 March 1993

[123] *Somalia News Update*, Uppsala, Vol.2, no.12 (30 March 1993) p.2.

There was also strong support within the African region for UNOSOM, particularly for the need to take appropriate measures to ensure the full implementation of the disarmament provisions of the Addis Ababa Agreement. It was therefore widely recognized and accepted that effective disarmament of all the factions and the warlords was a *conditio sine qua non* for the accomplishment of the other aspects of the mandate of UNOSOM, be they political, civil, humanitarian, rehabilitation or reconstruction.

In a new departure, which was in line with the UN's desire to cobble together a Somali government as soon as possible, the agreement also provided for the establishment over two years of a 'transitional system of governance'.[124] On May 1993, command was formally transferred from UNITAF to the United Nations, ending the transition process. Prior to the adoption of resolution 814(1993) the UN Secretary-General had appointed General Çevik Bir, a Turk who had worked closely with the Americans in the North Atlantic Treaty Organization (NATO), as Force Commander, and retired Admiral Jonathan Howe, who had served as security advisor to President Bush, as his Special Representative for Somalia. Boutros-Ghali had accurately calculated that if the operation were headed by an American, this would guarantee strong US support.

Eventually, the US undertook to contribute most of UNOSOM II's logistical units. It also positioned a Joint Task Force off the Somali coast under a separate command structure reporting directly to the US Government. Additionally, it provided a small 'Quick Reaction Force' at the request of UNOSOM II's Force Commander, which was also to report to the US government. Later, in August 1993, the US deployed a third force in Somalia, composed of US Army Rangers and specially trained units, which were

[124] See the Addis Ababa Agreement concluded at the first session of the Conference on National Reconciliation in Somalia, 27th March 1993, reproduced in The UN and Somalia, 1992-1996 op.cit. p.264.

to report to commanders in the United States.[125] With the prominence of US logistical support and special forces, UNOSOM II acquired a strongly American orientation that, as will be shown below, raised questions concerning the UN's control over it's own operations.

THE 5TH JUNE ATTACK OF UN TROOPS

A major task that fell on UNOSOM II after it took over responsibility from UNITAF in May 1993, was the disarmament of the armed groups that has terrorized the people and made extortion from humanitarian assistance agencies the source of their considerable income.

On 5th June 1993, UNOSOM II forces attempted to carry out an inspection of five of the United Somali Congress (USC) and Somali National Alliance's (SNA's) weapons storage facilities in and around Mogadishu. Pakistani troops who had carried out the inspections were ambushed by gunmen on their way back to base. Additionally, a Pakistani unit guarding a food distribution center in South Mogadishu was also attacked. Twenty-four Pakistani peace-keepers were killed and 56 were wounded.

The death of so many UNOSOM II forces in one day brought to light the enormity of the challenge that the UN faced in its mission to forcibly disarm Somalia. UNOSOM II had been aware that the area of the attack (the 21st October Road around Cigarette Factory) was inhabited by militia forces. But their battle preparedness and the quality and quantity of their weapons was not then entirely known.[126]

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[125] See The UN and Somalia. 1992-1996 op.cit. pp.44-45.
[126] Report of the Commission of Inquiry to investigate armed attacks on UNOSOM II personnel. UN. Doc.S/1994/653, 1 June 1994; par. 118)

The incident also brought to light UNOSOM's lack of preparedness and the inadequacy of its military equipment. Prior to undertaking the roles under its mandate, UNOSOM required time, expertise and structures to gather appropriate information. The inspection of 5th June had been carried out before this was completed. There was also a serious shortage of the requisite staff with experience to execute the enormous tasks assigned to UNOSOM II. Additionally, the mission was ill equipped with operational *matérial* for the nature of its operations and the civil-war environment. Some of the contingents lacked appropriate hardware such as armoured personnel carriers (APCs) to protect their troops from small-arms fire.[127] To further compound the state of affairs, administrative, financial and logistical problems meant that many of the contingents promised by member states were not in place by the time of the formal departure of UNITAF on 4th May 1993. With the 17,000 out of 28,000 UNOSOM troops who had been deployed came the challenge of welding together forces from numerous countries, with varying types of equipment, training, cultures and languages. This task had only just begun to be addressed. In expanding UNOSOM's mandate, without ensuring the availability of resources for the achievement of the stated objectives, the seeds of UNOSOM II's failure had been sown. Nonetheless, UNOSOM II officials and military commanders became more convinced of the need to take decisive action to disarm the factions in Mogadishu or at least to substantially reduce their capability to wage war.

In addition to Resolution 814 (1993), UNOSOM also received authority from Security Council Resolution 837 (1993) for this task. Unanimously adopted by the Security Council, Resolution 837 (1993) reaffirmed that the Secretary-General was authorized under resolution 814 (1993), to take "all necessary measures against all those

[127] See Report of the Commission of Inquiry, op.cit. pars. 47-50.

responsible for the armed attacks" on UNOSOM II personnel, including their "arrest and detention for prosecution, trial and punishment".[128] The Council also requested the Secretary-General to "inquire into the incident with particular emphasis on the role of those factional leaders involved".[129] The vote of Resolution 837 was secured through painting a picture of General Mohammed Farah Aideed deliberately attacking UN forces unprovoked and murdering 124 soldiers.[130] However, the UN Independent Commission of Inquiry was more prudent on the matter. The Commission 's report, in paragraphs 81 – 93 described the rift that had developed between General Aideed's forces and the UN . Paragraph 94 stated that a number of mistakes had been made, such as the refusal to take into account the Pakistani position or the failure to notify the USC leadership of the intended inspection or heed their warnings.[131]

On 12th June 1993, UNOSOM II begun a systematic effort in south Mogadishu to reduce USC/SNA weapons and command-and-control sites from which attacks were being mounted against UN forces. On 17th June 1993, pursuant to resolution 837(1993), Admiral Howe publicly called for the arrest and detention of General Aideed. It was unfortunate however, that without prior investigation, blame for the attacks of 5th June were laid on the USC/SNA . As a result, the UN made decisions, based on scanty information, that would have serious repercussions for the operation.

On 14th and 19th June, the Security Council strongly endorsed the actions of UNOSOM II and its efforts to restore law and order. It reaffirmed these actions as having

[128] UN Doc. S/RES/837 (1993), 6 June 1993.
[129] Ibid
[130] Gérard Prunier Somalia: Civil War Intervention and Withdrawal 1990-1995 op. cit.
[131] Report of the Commission of Inquiry, op.cit.

been 'carried out in accordance with resolutions 814 (1993) and 837 (1993)',[132] and as forming 'part of a continuing programme to disarm the Somali society and neutralize all heavy weapons'.[133] On the other hand, the Secretary-General, reporting on the implementation of SC Resolution 837(1993) justified UNOSOM II's actions since 5th June, as having been undertaken pursuant to the primary objectives of its mandate, that is, in a bid 'to put an end to the plight of the Somali people, set them firmly on the path to economic rehabilitation and political reconciliation and promote the rebuilding of Somali society and political institutions'. This task would require 'the restoration of peaceful conditions throughout Somalia and the effective implementation of the process of disarmament'.[134] These statements essentially spurred UNOSOM II further into military confrontations with the United Somali Congress (USC) / Somali National Alliance (SNA). With the Security Council and Secretary-General's legitimizing actions, UNOSOM II gradually became more deeply involved in what was to become a virtual war between it and the USC/SNA forces.[135] Meanwhile, the UN continued to push its political agenda with its Special Representative, Leonard Kapungu, deliberately trying to play groups such as the United Somali Front (USF) against the ruling SNA.

[132] Statement by the President of the Security Council endorsing the actions of UNOSOM II, UN Press Release SC/5647-SOM/24, 14 June 1993.
[133] Ibid. See also, Statement by the President of the Security Council in support of actions to restore law and order in Somalia. UN Press Release SC/5650-SOM/28, 18 June 1993.
[134] See Report of the Secretary-General on the implementation of security Council resolution 837(1993), UN.Doc.S/26022, 1 July 1993
[135] Even though UNOSOM II initiatives were limited to a few search and sweep operations conducted mainly by the QRF, the SNA increased its attacks dramatically from 6 July onwards. The feeling of being at war is reflected in UNOSOM II fragmental orders (fragos). Until 8th July, they refer to UNOSOM II adversaries as "hostile forces". After that date, the fragos use the phrase "enemy forces".(See Report of the Commission of Inquiry, op.cit.. par.152).

FURTHER ATTACKS

In August, the US sent an élite force of US Army Rangers and other specially trained commandos to Somalia, to strengthen the international forces in Mogadishu (which were still below the authorized level and step up the effort to find and detain those responsible for the attack on UNOSOM II forces. Operating under a separate command arrangement from UNOSOM II contingents and the US Quick reaction Force, they staged several raids in August-September 1993 and succeeded in seizing a number of General Aideed's aides.[136] Again, the Security Council in its resolution 865(1993), adopted on 22 September, expressed its unanimous support for UNOSOM II's strategy.[137] This resolution also reflected a wariness by the international community in the wake of escalating violence. A detailed plan, clearly setting out UN priorities and tactics for the operation was then sought by the Security Council. It also requested the Secretary-General to implement his recommendations for the re-establishment of the police and judiciary on an "urgent and accelerated basis".[138]

On 3rd October 1993, US Rangers launched an operation in south Mogadishu aimed at capturing a number of key aides of Somali faction leader, General Aideed, who were suspected of complicity in the 5th June attack, as well as subsequent attacks on UN personnel and facilities. Although the operation achieved its objective, it turned into a disaster when two helicopters were shot down and almost a company of the Rangers was trapped in a deadly firefight with Somali militia. The operation had been carried out entirely by the Rangers, and only very short notice was given to the UNOSOM II Force

[136] See Report of the Commission of Inquiry op.cit.
[137] S/RES/865(1993), 22 September 1993
[138] Ibid. This mixing of long-term objectives with the short-term ones usually pursued where forceful intervention is carried out, was partly responsible for the Missions failure.

Command.[139] This weakened effective coordination between UNOSOM II troops and the Quick Reaction Force.

It took many hours for UNOSOM II reinforcements to reach the trapped Rangers and by the time the battle was over, 18 US soldiers and one Malaysian soldier had been killed, 90 US, Malaysian and Pakistani soldiers had been wounded and one US pilot had been captured.[140] On 7th October, public outcry forced President Clinton to announce that all US forces would leave Somalia by 31st March 1994 and to state publicly that they were all under American command.[141] Subsequently, European governments with contingents serving in UNOSOM II also announced their intention to withdraw their troops by the same date. As a result of the troop withdrawals by the US and several European countries over the next six months, UNOSOM II lost several of its best-equipped contingents, including key logistic units. This reduction in strength seriously impaired UNOSOM II's capability to carry out its mandate long before the date set in Resolution 865 (1993) for the completion of the UNOSOM II mission.[142]

In November, the Secretary General wrote to 42 Member States, urging them to contribute additional troops to UNOSOM II but not a single positive response was received by the beginning of 1994.[143] As the feasibility of the operation and the willingness of Member States to participate had been predicated on strong US support,

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[139] See Report of the Commission of Inquiry, op.cit.

[140] Further report of the Secretary-General submitted in pursuance of paragraph 19 of resolution 814(1993) and paragraph 5 of resolution 865(1993) on the situation in Somalia, including the 3rd October 1993 incident in Mogadishu, and presenting three options for the continuation of UNOSOM II. UN Doc. S/26738, 12 Nov.1993.

[141] Mayall, James and Lewis Ioan 'Somalia' op.cit. p.118.

[142] S/RES/865(1993), 22 September 1993.

[143] Further Report of the Secretary-General submitted in pursuance of resolution 886(1993), reviewing the options for the future mandate of UNOSOM II S/1994/12, 6 January 1994.

the latter's withdrawal dealt a heavy blow on UNOSOM II. It was evident that a redefinition of UNOSOM would have to be undertaken.

On 6th January 1994, the Secretary-General reported to the Security Council on a number of factors affecting UNOSOM II's deployment and set out options for revising the operation's mandate.[144] On 4th February, the Security Council adopted Resolution 897 (1994) approving a revised mandate for UNOSOM II based on the Secretary General's second option in which he recommended that UNOSOM II would not use coercive methods but instead rely entirely on the cooperation of the Somali parties. UNOSOM II would use force only in self-defense and disarmament would be voluntary. At the same time, UNOSOM II would strive to keep the main supply routes open in the south and the center of the country, so as to ensure the unimpeded flow of humanitarian assistance, and would also focus on the protection of major ports and essential infrastructure, the repatriation of refugees and resettlement of displaced persons, political reconciliation and the rebuilding of the Somali police and judicial systems.[145] The Resolution also authorized the gradual reduction of the UNOSOM II force level down to 22 000, drawn exclusively from the Third World. The main contingents were from Malaysia, Bangladesh, Morocco, Egypt, Nigeria and Zimbabwe. Initially, there were fears that Somali militias would attack these troops for which they 'had no respect'.[146] There were some attacks against Indian troops in mid-1994, but these remained limited. In fact, these fears proved unfounded.[147]

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[144] Ibid.
[145] Security Council Resolution giving UNOSOM II a revised mandate without enforcement powers. S/RES/897(1994), 4 February 1994
[146] Gérard Prunier Somalia : Civil War, Intervention and Withdrawal 1990-1995 op. cit
[147] Id.

At the political level, the situation had not changed very much. By the end of March 1994, an agreement was signed by Mahdi and Aideed, ostensibly on behalf of their allies, as well as themselves. It issued the usual declarations forswearing violence and urging the implementation of general disarmament as a precondition for reconstruction. It also set a date to establish rules and procedures for voting and participation in a national reconciliation conference. However, these vague and extremely optimistic developments were foreshadowed by Resolution 897 which revised UNOSOM's mandate from peace-enforcement to peacekeeping.[148] The mission was withdrawn in March 1995.

[148] Mayall, James and Lewis, Ioan 'Somalia' op. cit. p.120.

CHAPTER FIVE

A CRITICAL ANALYSIS OF THE UN HUMANITARIAN INTERVENTIONS IN RWANDA AND SOMALIA

" It has rightly been said that those people who do not learn from history are condemned to repeat it. This belief underpins much of the Human Rights work of the United Nations. In order to prescribe the optimal remedies to prevent future genocide (and other large-scale atrocities) it can be of positive assistance to diagnose past cases in order to analyze their causation together with such lessons as the international community may learn from the history of these events".[1]

INTRODUCTION:

The post-Cold War era presented the UN with new challenges, such as the drafters of the UN Charter had not contemplated. This called for a dynamic re-interpretation of the UN Charter, especially with regard to provisions on the use of force. During the crisis' that claimed many lives in Rwanda and Somalia, the UN had to resort to unique, unprecedented decisions. Though the Gulf War had given the international community a glimpse of what the UN could accomplish with Security Council unity, each of these new crisis was approached by the organization in an ad hoc manner. Indeed, each case proved to be *sui generis.* Nonetheless, the international organization's actions in the early 1990s showed that human rights were beginning to be given high priority within its agenda.

This Chapter will critically analyze the resolutions which mandated humanitarian intervention in Rwanda and Somalia in order to determine what kind of legal framework

[1] Benjamin C.G.Whitaker, Special Rapporteur to the Sub-Commission on Prevention of Discrimination and Protection of Minorities in his report- A revised and updated study of Mr.Ruhashyankiko (former rapporteurs observations): UN Doc. E/CN.4/Sub.2/1985/6

was applied, and whether these can be viewed as having laid precedents for future UN humanitarian interventions.

This Chapter will also analyze and establish the causes behind the reluctance exhibited by the UN prior to and during the humanitarian interventions. Further, it will analyze how the humanitarian interventions were conducted in order to establish whether the UN has the capacity to carry out such operations efficiently. The shortcomings in the manner the humanitarian interventions were conducted will also be pointed out.

LEGAL FRAMEWORK FOR UN ACTION IN SOMALI AND RWANDA HUMANITARIAN INTERVENTIONS.

On 23rd April 1992, under Resolution 733(1992), the Security Council, acting under Chapter VII of the UN Charter, imposed a "general and complete embargo on all deliveries of weapons and military equipment to Somalia".[2]

Nonetheless, while 'recalling its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security,[3] the Council did not expressly state that the Somali crisis posed such a threat. One is left to imply, through the various statements, that indeed, such a determination was implicit. For example, under paragraph 5 of the resolution, the Council decided that all states would, "for purposes of establishing peace and stability in Somalia" immediately implement a general and complete embargo. While the emphasis here was on the establishment of peace and stability in Somalia, the Security Council did, nevertheless, act under Chapter

[2] Security Council Resolution urging an immediate cease-fire in Somalia and imposing an embargo on all arms deliveries to Somalia S/RES/733(1992), 23 January 1992.
[3] Preamble, S/RES/733 (1992)

VII of the UN Charter which implies that it had perceived the situation as comprising a threat to international peace and security.

In another statement, in the resolution's preamble, the Security Council noted that it was "gravely alarmed at the rapid deterioration of the situation in Somalia, and the heavy loss of human life resulting from the conflict, and aware of its consequences on stability and peace in the region". Nowhere, though, does the Council explicitly define the situation as a 'threat to international peace and security'. This had the implication on the subsequent actions, as the determination that the humanitarian crisis was a threat to international peace and security would have been able, more than anything else, to strengthen the argument that members had a right to intervene in Somalia.

While there is no requirement that all available economic and diplomatic sanctions must be applied before resorting to force, there is also no requirement that if measures short of force should fail, the Council's next plan of action must entail military enforcement. Article 42 of the UN Charter provides that: Should the Security Council consider that measures provided for in article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security.

The Security Council was therefore acting well within its discretion when it decided to pursue the conclusion of cease-fire agreements, after it became evident that despite the embargo, hostilities had continued. Whether this action was unable to relieve the misery in Mogadishu is another matter altogether.

Security Council Resolution 929 (1994)

The deployment and initiation of UNAMIR II had been a very slow and difficult process which would have dragged on for even longer. Following the Secretary-General's direction, the Security Council decided to consider France's offer to undertake a multinational operation. At this point, the magnitude of the humanitarian catastrophe in Rwanda had been exposed.[4]

The Security Council adopted two resolutions prior to resolution 929(1994) in an attempt to address the Rwandan crisis. On 17th may, 1994, the Security Council, under resolution 918, authorized the expansion of UNAMIR to 5 500 troops. The Council determined that 'the situation in Rwanda' constituted 'a threat to peace and security in the region' and acting under Chapter VII, authorized an arms embargo. This resolution also went a step further and gave UNAMIR II authority to 'take action in self-defense against persons or groups who threatened protected sites and populations, UN and other humanitarian personnel or the means of delivery and distribution of humanitarian relief.[5]

However, as member states failed to respond quickly to requests for contributions of troops, equipment and airlift services, the requirements of UNAMIR II remained unmet.

The Security Council, on 22nd June 1994, invoked Chapter VII of the Charter, in authorizing member states to conduct a multinational operation, aimed at contributing to the security and protection of displaced persons, refugees and civilians at risk in Rwanda. The operation was to be temporary – limited to two months. The resolution was taken in

[4] See letter dated 20 June 1994 from the Permanent representative of France to the United nations addressed to the Secretary-General, requesting adoption of a resolution under Chapter VII of the Charter as a legal framework for the deployment of a multinational force to maintain a presence in Rwanda until the expanded UNAMIR is deployed. S/1994/734, 21 June 1994.

recognition that the situation in Rwanda constituted a unique case which demanded an urgent response by the international community.[6]

The objectives of Resolution 929(1994) were largely humanitarian and the use of force was thus directed at protecting displaced persons, refugees, civilians at risk and humanitarian operations rather than enforcing the arms embargo.

While the Security Council stated in the resolution that the Rwanda situation posed a 'unique case', it is notable that the mandate granted to Operation Turquoise was similar in objectives, to that of UNAMIR II. Indeed, France had mentioned in its proposal to lead a multinational force that it would act within the confines of the UNAMIR II mandate. What was required, though, for it to undertake such an operation, was a legal framework, namely authorization under Chapter VII.

Therefore, the only difference between the two resolutions lay in the wording . Resolution 929(1994) expressly authorized the multinational force to 'conduct the operation using "all necessary means", while Resolution 918(1994) gave UNAMIR II authority to "take action in self-defense" against persons or groups threatening protected sites and populations. The authority to use force to protect civilians at risk was therefore explicit in Resolution 929 but implicit in Resolution 918. The delay taken in authorizing the explicit use of force to protect threatened persons, in light of existing evidence of genocide is therefore culpable.

Resolution 794(1992)

Resolution 794 of 3rd December 1992 which established Operation

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[5] Ibid
[6] S/RES/929(1994), 22 June 1994

Restore Hope represented the first time in history that the UN to authorize a group of Member States not under UN command, to use military force for humanitarian ends in an internal conflict. The empowering resolution gained the unanimous support of the Council including China and a number of African members.

In the Resolution's preamble, the Security Council determined 'that the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles created to the distribution of humanitarian assistance, constituted a threat to international peace and security'. The Council then noted that 'the situation in Somalia was 'intolerable' and that UNOSOM's existing course 'would not in present circumstances be an adequate response to the tragedy in Somalia'.

In a bid to urgently establish a secure environment for humanitarian relief operations and to restore peace, stability and law and order in Somalia, the Security Council authorized the establishment of Operation Restore Hope. The Operation presented a perfect example of the international community's ability to effectively respond to a large-scale humanitarian disaster. Further, the UN had proved that if it wanted to act in Somalia, then Article 2(7) would be redefined to fit the situation. Hence, for example, intervention could be justified on the principle that where states allowed massive violations of human rights in their territories, they could not hide behind the shield of sovereignty. On the other hand, as large-scale human rights violations posed a threat to international peace and security, the UN had a right to intervene.

Indeed this case revealed, as the Permanent Court of International Justice (PCIJ) in the Tunis and Morocco Nationality Decrees Case had pointed out, that domestic jurisdiction is an essentially relative question – one which is dependent on the

development of international relations.[7] The principle of non-intervention therefore needed to be interpreted in light of the changing circumstances of the international society.

While Somalia, at the time, had no government, it could be argued that the humanitarian intervention was not considered intervention in a legal sense because it was based on the actual or implied consent of the sovereign, that is, of the people. In the preamble of Resolution 794, the Security Council stated that it was "responding to the urgent calls from Somalia for the international community to take measures to ensure the delivery of humanitarian assistance in Somalia". Sovereignty, in this case therefore, reverted back to the people of Somalia, once their government lost a claim to international representation of the people. However, the UN argued that with no effective sovereign in Somalia who it could seek consent from prior to the intervention, state sovereignty was not violated by the operation.

It is notable that resolution 794 registered unanimous support, unlike resolution 929(1994) (which authorized Operation Turquoise) where five Security Council members abstained from voting.[8] The unanimous support showed that the international community, including developing countries prone to defend the notion of state sovereignty, found it easier to act when there was no national government whose consent was being bypassed.[9] While the development of international relations may have done away with the doctrine of absolute and exclusive state sovereignty, it was clear that there was, nonetheless a need to establish a legal framework within which to justify humanitarian intervention.

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[7] See (1923) PCIJ Reports, Ser.B, No.4, p.24

[8] The vote on Resolution 929(1994) was 10 in favour, none against and five abstentions (Brazil, China, New Zealand, Nigeria and Pakistan).

Developing countries, and especially African governments are keen to ensure that humanitarian interventions, if and when undertaken, are 'consistent with respect for the national sovereignty of the host country'.[10] The voting ratio for Operation Turquoise reveals this fact. The majority of abstentions were by developing countries which appear to have been anxious regarding the threat to the principle of national sovereignty which a major UN effort to halt genocide would represent.

Nevertheless, the fact that there were no votes against Operation Turquoise acknowledged the contemporary trends in international relations where human rights have been universalized and states forfeit many attributes of their sovereignty when they engage in or allow gross violations of internationally recognized human rights.

It is interesting to note that the Rwandan Representative on the Council, who had opposed the earlier proposed UN intervention in Rwanda, was amongst those who voted in favour of Operation Turquoise. While this raised various eyebrows concerning France's neutrality, the fact is that the Operation was based on international consensus and carried out under proper legal authority.

Resolution 814

Resolution 814 of 26th March 1993 gave UNOSOM II responsibility under Chapter VII of the Charter for the consolidation, expansion and maintenance of a secure environment throughout Somalia.[11] This resolution emphasised 'the fundamental importance of a comprehensive and effective programme for disarming Somali parties, including movements and factions' . When the Security Council, acting under Chapter VII authorized " all necessary measures" against those responsible for the 5th June 1993

[10] Concluded during the Millenium Summit of the United Nations. Quoted in *Africa Recovery*, Vol.14, No.3, October 2000, p.1 & 8 – 9.

attack on 22 Pakistani troops serving in UNOSOM II, the Operation had overstepped the boundaries of a "neutral" humanitarian intervention.

Under Resolution 837, the Council clearly identified one of the factions as culpable. Though UNOSOM II was authorized to maintain a secure environment throughout Somalia, the spirited pursuit of a particular faction and warlord did not augur well for the operation. In fact, it detracted from the original objective of humanitarian intervention.

It is regrettable though, that at the meeting at which resolution 837 was adopted,[12] no objection was raised to it. The decision to arrest General Aideed, for example, based on that resolution, did not give rise to any debate on the powers of the Security Council in this area. If any differences of opinion or reservations existed as to the legality of such a decision, no trace of them is to be found in the verbatim record.[13] This shows the acceptance by the international community of the emerging norm that recognizes that human rights violations are no longer matters exclusively within the domestic jurisdiction of states and that the UN Security Council can make a decision to intervene, on behalf of the international community.

Indeed, these resolutions point to a general trend, that is truly reflective of the development of international relations. They point to the development of a legal framework for humanitarian intervention – the acceptance by the international community of the creation of a new exception to the rule against intervention. The Security Council, in Somalia and Rwanda, on determining that a situation was

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[11] S/RES/814(1993), 26th March 1993.
[12] See UN Doc. S/PV.3229, 6 June 1993
[13] Bedjaoui, Mohammed The New World Order and the Security Council: Testing the Legality of its Acts (Martinus Nijhoff Publishers, Dordrecht, 1994) p.50.

"intolerable" (that is, that the level of human suffering had reached shocking proportions), and that international peace and security had been threatened authorized the use of force, to address the situation.

EARLY ACTION: CAUTIOUS AND RIGID APPROACHES

The means employed prior to the humanitarian interventions in Rwanda and Somalia were limited to 'humanitarian palliatives',[14] even while the daily toll of death and suffering ought to have shamed it into action. In both crises, the Security Council did not act quickly and decisively. Resolution 751(1992) which established the United Nations Operation in Somalia (UNOSOM I) sought merely to facilitate negotiation and agreement among the Somali leaders, leaving the responsibility for the restoration of peace to them. Although it was realized that the civil war was a significant cause of the danger of famine, the UN did not assume any direct responsibility for ending the fighting or resolving the political impasse.[15]

The establishment of UNOSOM I to monitor the cease-fire and to protect humanitarian relief activities reflected the UN's desire to cooperate with the Somali authorities in their efforts towards finding a political solution, one that would, in effect, deal with the humanitarian emergency. Indeed, the signing of a cease-fire agreement on 3rd March 1992 by General Aideed and Mr. Ali Mahdi to be monitored by the United Nations, had given hope to the Organization, that with the ceasing of hostilities, would come an alleviation of the suffering. Nevertheless, a lot of time was spent by the UN negotiating with de facto political authorities for permission to carry out the operation.

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[14] See Annan, Kofi The Question of Intervention op.cit p.38.
[15] Report of the Commission of Inquiry S/1994/653, 1 June 1994; op. cit.

While the Operation placed cooperation with rival political groups high on its agenda, it was hindered from taking urgently required action when consent from the political factions proved to be slow or not forthcoming. It is evident that there was also an almost irresistible impulse on the part of the UN personnel to confer legitimacy on one or more participants in the Somali political crises. Additionally, UN officials were predisposed to trust the assurances of Somali 'leaders', many of who were not legitimate representatives of the Somali. This bias had grave implications for the peace process, not only in terms of the dubious nature of the outcome of negotiations between the improvised 'leaders', but also in terms of the poor image the UN portrayed.

The approach taken by the UN in Rwanda was similar – cautious and anxious to avoid what had, in the case of Somalia, come to be viewed as a disastrous intervention. UNAMIR I, throughout the genocide, continued in its attempts to secure a cease-fire, through contacts with representatives of the RGA and the RPF, in the hope that this would lead to political efforts to return to the peace process.[16] It only dawned on the UN too late that two wars, one of which they had been preoccupied with, had been going on in Rwanda. Meanwhile, too much time had been spent pursuing diplomatic negotiations and agreements that had proved inadequate to address changed circumstances.

Additionally, the Department of Peace-keeping Operation's (DPKO) instructions that UNAMIR leave the responsibility for securing peace in Rwanda to the concerned parties revealed its concern to reduce risk so as to avoid "failures". As a result, the DPKO did very little to strengthen the mission's preparedness for worse cases. To compound matters, UNAMIR showed very limited authority to make decisions and depended heavily on DPKO's judgement of the situation. However, DPKO should have

given UNAMIR officials on the ground the leeway to adjust their plans where and when it was necessary. Furthermore, the communication channels between UNAMIR and the DPKO should not have been perceived as a one way instruction route, with the mission on the receiving end, but as an exchange conduit through which the UN headquarters received a clear picture of the situation on the ground and worked closely with UNAMIR officials to ensure that any action undertaken was suitable for the circumstances.

UNAMIR also needed a flexible mandate to permit its troops to respond instantly to or preempt violent acts. The fact that the mission had to be the subject of advance international agreement, seriously reduced its flexibility in fast-changing circumstances, leading to widespread criticism. The operation was not grounded on the understanding that in such situations, there cannot be fixed or quick answers. As in Somalia, the preoccupation with ceasefire negotiations and agreements prevented the UN from effectively addressing the deteriorating situation. In these two cases, the UN, having been established to protect future generations from the scourge of war (war here referring to inter-state as opposed to intra-state war), showed its inadequacy in dealing with the dynamics of internal conflict.

SHORTCOMINGS OF THE HUMANITARIAN INTERVENTIONS:

Absence of a competent intelligence data analysis system

An underdeveloped intelligence capability was glaring during the Somali and Rwanda crises. While there were ample warnings given to the UN of an impending disaster in Rwanda, the absence of a central unit for collection and analysis of the

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[16] Yearbook of the UN. 1994 op.cit. Report of the Secretary General, p.278.

information led to the UN's inability to follow through on such warnings.

For example, in his oral statement before the Commission on Human Rights on 2nd March 1994, the Commission's Special Rapporteur on Extrajudicial, Summary or Arbitrary executions who had visited Rwanda in April 1993, expressed concern at reports of politically motivated killings, the failure to implement the August 1993 Arusha Peace Agreement and the fact that none of his recommendations for measures had been followed by the Rwandese government.[17]

The Special Rapporteur had closely followed the situation in Rwanda for approximately one year and repeatedly addressed urgent appeals to the Government of Rwanda after receiving reports of death threats and attempts against the lives of a number of people. The information was never integrated into the overall UN picture of the Rwanda crisis.

Similarly, in Somalia, the UN failed to integrate crucial information into the operation's framework. Hence, it impossible for the two Somali UN missions to be clear about the goals, means, methods to be used and linkages among them. It was evident that although the Security Council attempted to delimit the scope of UNITAF's operation, the delimitation was not extremely clear. As such, disagreements between the Secretary-General and the US concerning the scope of the mandate soon broke out, compromising the conduct of latter missions. Indeed, the *ad hoc* nature in which UNITAF pursued disarmament, had grave implications for UNOSOM II's disarmament programme and

[17] Quoted in Letter dated 21 July 1994 from the Secretary-General to the President of the Security Council transmitting the report on violations of international humanitarian law in Rwanda during the conflict, prepared on the basis of the visit of the United nations High Commissioner for Human Rights to Rwanda (11-12 May 1994), S/1994/867, 25 July 1994. par.2

cost the UN greatly in terms of the lives of participating troops and its credibility in the eyes of the Somali and the international community.

If the UN is to be involved in crises like those on an operational basis, it will have to overhaul its intelligence capabilities, staff planning techniques and decision-making procedures. Such capabilities will be critical for the anticipation of events and the formulation of effective options.

Lack of Political Will

Despite the lack of a centralized unit to integrate and forward information, the UN nonetheless had sufficient information from which to draw a conclusion that the Rwanda massacres constituted genocide. Indeed, a pattern of violence was discernible and the state apparatus itself was clearly implicated in arms distributions to para-military groups and in extremist propaganda advocating the need to rid Rwanda of all Tutsi and their supporters. By early 1994, specific information about plans and conspiracies towards this end was in the UN system. Indeed, the Secretary-General's admission, nearly three months after the killings that a genocide was being perpetrated in Rwanda, only confirmed information in the UN's possession.

Therefore, the failure to fully appreciate the genocide stemmed from political, moral and imaginative weaknesses and not informational ones. Indeed, the Security Council was well aware of the situation it was dealing with. This awareness was signaled through its use of statements which adopted the international legal definition of genocide from the December 1948 Genocide Convention. The Council however declined to use the term.

In a statement by the President of the Security Council on 30 April 1994, the Security Council expressed its concern that "the massacres and wanton killings had continued unabated in a systematic manner in Rwanda".[18] Later, while authorizing the expansion of UNAMIR to 5,500 troops and mandating UNAMIR II to provide security to displaced persons, refugees and civilians at risk, the Security Council, in its resolution 918 of 17th May 1994, noted that "the killing of members of an ethnic group with the intention of destroying such a group, in whole or in part, constitutes a crime punishable under international law".[19] Still, the term 'genocide' was evaded.

Similarly, in his report of 31st May 1994, the Secretary-General brought it to the attention of the UN that an estimated 250 000 to 500 000 Rwandese had been killed, and tens of thousands more maimed or wounded. He further observed that the massacres had 'continued in a systematic manner throughout the country' and that the killers 'included members of the Rwandan Government Forces, but in the main were drawn from the Presidential Guard and the *interhamwe*.[20] However, no mention was made about the fact that the massacres targeted a minority population and not the Rwandese civilians in general.

According to James Woods, a former Pentagon African Specialist,[21] the 'senior policy-making levels at the UN did not want to admit what was going on or that they knew what was going on because they did not want to bear the onus of mounting a humanitarian intervention – probably dangerous – against a genocide'. In his opinion, 'much of the pretense about whether or not it was a genocide' was simply a smokescreen

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[18] UN doc. S/PRST/1994/21, 30 April 1994
[19] UN Doc. S/RES/918 (19940, 17 May 1994.
[20] UN.Doc. S/1994/640, 31 May 1994. See pars.3 – 7.
[21] See Rwanda: The Preventable Genocide, op.cit. p.56

for the policy determination in advance. Indeed had the Security Council invoked the Genocide Convention, it would have provided a legal framework upon which the UN could take action on the massacres in Rwanda.

Article 8 of the Genocide Convention mandates the competent organs of the UN, to which the matter of genocide has been referred, to take 'such action under the Charter of the UN as they consider appropriate'. [22] However, this article leaves it entirely to the Security Council to determine what action would be 'appropriate'. It does not specifically authorize the Security Council to undertake a humanitarian intervention, even though the assumption has long been that this would constitute an 'appropriate action'. This would mean that unless the Security Council made the linkage – of genocide constituting a threat to international peace and security – no action would be authorized under chapter VII.

Nonetheless, the normative obligation cast on the UN to act to prevent genocide according to the Genocide Convention, and the enormous cost of a miscalculation, make contingency planning imperative; a task that was however, not undertaken in Rwanda.

Eventually, two months into the genocide, on June 20th, the Secretary General in his report, had begun to call the 'deliberate killings' in Rwanda by their real name: genocide. From this report, the Security Council finally had the legal framework which it had needed in order to authorize forceful action in Rwanda. In only two days after the report was submitted, the Security Council adopted resolution 929(1994) which authorized Member States to conduct a multinational operation for humanitarian purposes in Rwanda. As this action was predicated on adopting the right term to define the crisis,

[22] Article 8, 1948 Convention on the Prevention and Punishment of the Crime of Genocide

then the reluctance exhibited by the international community to face up to reality is culpable.

CAPACITIES OF THE UN HUMANITARIAN INTERVENTIONS IN RWANDA AND SOMALIA

The Rwanda experience showed that while the Security Council authorized the use of force, its authority was diminished because it lacked the means to effectively intervene even though it wished to. The UN has virtually no professional military expertise, and the secretariat in New York appears reluctant to significantly increase its capacities in this area.[23] In this regard, it can only authorize member states to take the necessary action. Whereas the UN, through US-led Operation Restore Hope and French-led Operation Turquoise, was able to effectively reduce the human suffering in Somalia and Rwanda respectively, it was severely limited in doing so through UNAMIR II owing to its weak financial and logistical capacity.

The experience in this operation showed the tardiness and caution with which member states approach interventions. Limited offers for troops were received from member states and of these, the UN still had to embark on the task of matching troops with sufficient equipment. Requests by the secretariat to governments with fully equipped units to make them available temporarily until contingents offered were properly equipped and deployed proved futile. The first phase of deployment therefore lagged behind for more than a month.

Even after the first deployment, UNAMIR was still not in a position to undertake the tasks entrusted to it for a further three months. This Operation revealed that the UN is not equipped to make or implement rapid decisions that require establishing a physical

presence on the ground in a crisis. The political machinery and logistical and financial structure which can facilitate efficient intervention do not exist.

UNITAF and Operation Turquoise were able to achieve their goals, largely through active western contributions, particularly US and French support. Nevertheless, although major European powers possessed adequate military resources to organize earlier interventions in Rwanda and Somalia, military resources alone were not enough. States must also possess the desire and will to lead, and this was not present in European capitals during the early stages of the Rwanda and Somali crisis. Without strong leadership, the UN will incline toward risk averse policy choices.

The US was one of the few countries that could supply the rapid airlift and logistic support needed to move reinforcements to Rwanda. Indeed, support for UNITAF was provided by sizeable contingents from France, Italy, Belgium and Saudi Arabia principally because the Operation was led by the U.S. American support for UNOSOM II also ensured that the operation received wide backing, especially from industrialized states.

The virtual collapse of UNOSOM II therefore gave testimony to the fact that any sustained intervention would require U.S. support. For example, the US's reluctance to get involved in Rwanda is blamed for dampening the political will of other, especially western, states and contributing to the UN's delay in taking effective action. Indeed, French support for Operation Turquoise was only achieved after the U.S. offered contributions to the UN operation in Rwanda.[24]

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[23] Weiss, Thomas et. al.(eds.) The UN and Changing World Politics op.cit p.88.

[24] France is noted for its 'sudden' change of attitude towards Rwanda - from detached interest to full commitment. By 20th June, for example, France had offered 20 million French francs to Senegal to cover the equipment requirements of 200 men.(See U.N.Doc. S/1994/728, 20 June 1994, par. 6.) Earlier on,

The fact that the UN operations in Somalia and Rwanda met their goals largely after the U.S gave its support, whether explicitly or implicitly, casts considerable doubt over the possibility of effective multilateral intervention in the absence of U.S. support. Even as the UN Security Council has revolutionized the interpretation of Article 2(7), the U.S. has increasingly cut back on its peacekeeping involvement around the world. In the absence of political will, especially of the great powers, a repeat of UN history is bound to occur should a crisis on the scale witnessed in Rwanda or Somalia breakout. The sophist teaching that "might makes right" is a great self-legitimizing philosophy for the strong - but what about the weak. Their hopes and expectations depend on a stable international legal order.

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during the evacuation of foreign nationals from Rwanda under "Operation Amaryllis" Belgian foreign minister, Willy Claes, had expressed the hope that the UN modify the UNAMIR mandate to allow the international soldiers to intervene militarily and stop the slaughter. He had suggested that the 250 arriving French and Belgian paratroopers join the Belgian UN contingent already on the spot. However Paris, afraid that any form of humanitarian intervention might be mistaken for an attempt at supporting the provisional Government, was adamantly opposed to such an idea.(See Prunier, Gérard, The Rwanda Crisis: History of a Genocide op.cit. p.234 On 21st June however, at about the time when the US had joined other UN Security Council members in giving final approval for deployment of UNAMIR troops, France offered to undertake a French-commanded multinational operation. The US offer of resources to facilitate the immediate deployment of UNAMIR troops motivated France in its offer.

CHAPTER SIX

CONCLUSIONS

Humanitarian intervention by the United Nations has increasingly come to be accepted as a legitimate objective by the international community. This acceptance is a reflection of the global trends governing the 1990s and the 21st Century. The internationalization of human rights, and the dilution of the concept of absolute sovereignty are cardinal amongst these trends.

There has been a fundamental shift in international public opinion in favour of a stronger commitment to the protection of human rights. This great revolution in contemporary thinking has recognized that borders are not inviolable in the face of human suffering and oppression and that certain circumstances demand external intervention.

As the twentieth century has progressed, the duty of each state to observe a basic respect for human rights, and to refrain from violating them in a manner which "shocks the conscience of mankind" or poses a "threat to peace and security" has become a litmus test for the continued respect of sovereignty and the principle of non-intervention.[1]

The doctrine of humanitarian intervention has come to be seen as being largely compatible with that of sovereignty. In his report to the General Assembly at the Millenium Summit, in September 2000, Kofi Annan stressed that;

> '...no legal principle – not even sovereignty – can ever shield crimes against humanity. Where such crimes occur and peaceful attempts to halt them have been exhausted, the Security Council has a moral duty to act on behalf of the international community.'[2]

The UN has proved that even without formal Charter amendment, it is flexible enough to reinterpret the restriction in Article 2(7) on intervening in the domestic affairs of states. As the UN-authorized interventions in Somalia and Rwanda indicate, the threshold for a breach of peace and security and hence, Chapter VII treatment, has been

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[1] Ravi Mahalingham 'The Compatibility of the Principle of Non-Intervention with the Right of Humanitarian Intervention' *1 UCLA Journal of International Law and Foreign Affairs* (1996). pp 221-263: 263.

liberalized. The presence of an humanitarian catastrophe itself (as in Somalia) can trigger Chapter VII action even where the threat to other states is not particularly strong.

The Security Council is attempting to deal with causes of violence even if they arise from conditions within states rather than between states. These changes in international relations have created a new potential for multilateral intervention. Therefore, the UN has increasingly, through Security Council action, undertaken all sorts of deeply intrusive actions pertaining to human rights inside states, in an effort to resolve security problems.

Nevertheless, as both case studies revealed, the right to humanitarian intervention was strictly restricted and only recognized in cases where the state both failed to protect its own citizens and that failure jeopardized the peace and security of other states. While the international community cannot stand aside where gross and systematic violations of human rights are taking place, these cases demonstrated that humanitarian intervention must be based on legitimate and recognized principles, if it is to enjoy the sustained support of the world's peoples.

Although the international community has accepted the fact that the UN has a duty to protect human rights,[3] few states have accepted that in cases of grave violations of human rights, military intervention must become a duty. Indeed, the major powers are often reluctant to engage in humanitarian intervention. The conventional wisdom is that the riskier an operation, the weaker the support for it. Therefore, in both Rwanda and Somalia, the major powers were less inclined to remain engaged in UN operations once casualties began to rise. Moreover, since none of their vital interests were threatened by the crises, sustaining continued humanitarian intervention was even more formidable.

Yet, in view of the UN's limited capacities, it has come to depend heavily on the support and contribution of member states, and especially the permanent members of the Security Council, to enable it to respond to new challenges and prepare for unanticipated ones. However, as both case studies show, while adequate military resources were imperative for the humanitarian interventions, great power nations also had to posses the desire and the will to lead for the UN to have a certain amount of success. Since there

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[2] Quoted in *Africa Recovery*, Vol. 14. No.3, Oct. 2000. p.8

[3] See Vienna Declaration and Programme of Action, U.N.GAOR, World Conference on Human Rights, 48th Session, 22nd plenary meeting, part 1, U.N.Doc. A/CONF.157/23(1993)

was an absence of this desire, the major powers which control the UN, did not permit it to effectively engage the crises. The current legal framework whereby the Security Council is best placed to legitimately determine the need for the use of force, is therefore an insufficient guarantee that the Council will authorize intervention when the next human rights crisis occurs.

Although the UN Security Council operates in a political context, it has been demonstrated that the UN Secretary General can have a decisive influence on decision-making in the Council and that he has the capacity to mobilize the will of member states on key issues of the agenda. In the case of Rwanda, for example, the Secretariat focused its efforts on the task of lobbying for effective action as the genocide abated. Nonetheless, after the Secretary General publicly labeled the massacres as genocide, he visibly influenced the political agenda. The Security Council was able to find a legal framework on which to effectively address the Rwanda genocide. This reveals that much of the delay by the UN in both crises was not occasioned by any constraints in international law. Indeed, the humanitarian interventions in Somalia and Rwanda were carried out despite the provisions in Article 2(7) of the Charter. When the genocide was brought to an end in Rwanda, that only confirmed the reality that the massacres could have been stopped well beforehand.

The Security Council's resolutions which authorized the interventions in Rwanda and Somalia show a new trend in the UN's interpretation of Article 2(7) of the UN Charter. While recognizing the Council's duty to preserve international peace and security, the resolutions also appreciated the UN's obligation to protect human rights. Where there were violations of a grave and massive nature, the Security Council, by determining such crises as posing a threat to international peace and security, legitimized UN humanitarian interventions. In a globalized international community, it is impossible to fathom the possibility that human catastrophes of the scale experienced in Rwanda and Somalia, will not have reverberating effects on regional and international peace and security. This fact must be acknowledged in enabling the UN respond to humanitarian crises.

Humanitarian intervention by the UN is by no means guaranteed where massive and grave violations of human rights are taking place. There is a need, nonetheless, to ensure that the UN deters or halts future humanitarian catastrophes, if the organization is to retain its credibility in the eyes of the international community. This can be done by assisting the Security Council to rise to the challenge posed by such situations through reforming the way the UN analyzes intelligence data and by supporting regional initiatives, in cooperation with the UN, to undertake humanitarian interventions.

Strengthening the UN Information Collection and Analysis Capacity

As the case studies revealed, part of the reason why the Security Council was unable to act with efficiency called for, was that it lacked information based on comprehensive and independent assessments of the requirements of the situation. In Somalia, inadequacies in the research and conceptual stage of UN operations eventually lead to their failure. The timing and manner in which disarmament was conducted, and the decision to pursue Aideed and members of the SNC, for example, reflected an utter misunderstanding of Somali conditions and circumstances.

There is a need therefore, for research to develop clear mission statements and plans. A properly resourced secretariat would ensure that there is wide and appropriate consultation of representatives of the country in question. Further, the UN also needs to build on regional expertise within the affected region (for example the Great Lakes region, in the case of Rwanda or the Horn of Africa Region, for Somalia). It also needs to work closely with those best placed to initiate the formulation of strategies, especially UN personnel on the ground.

In Rwanda, the collection and analysis of information was weak and *ad hoc*. The UN human rights machinery, for example, utilized a monitoring process that was sporadic and the information generated hardly factored into other UN department decisions. There was no mechanism which channeled information from UNAMIR and other UN agencies in the country and elsewhere through the UN's Secretariat's Departments for Humanitarian Affairs, Political Affairs and Peace-Keeping, for the Secretary General to regularly present to the Security Council so that it could take earlier

action.[4]There is a need for a central unit within the Secretariat that can be charged with a systematic study of up-to-date information. Such a unit should be able to translate the information into strategic alternatives and have direct access to the Secretary General.

In Rwanda, more than two months into the genocide, the Human Rights Commission appointed a Special Rapporteur to investigate first hand the human rights situation in Rwanda, and to provide a preliminary report in four weeks. On 28th June, four days after the UN Security Council had authorized Operation Turquoise to use force to protect civilians at risk, the Special Rapporteur presented the results of his preliminary investigation. He noted that 'the human rights violations comprised genocide through the massacre of the Tutsi'.[5] Had this report been commissioned earlier, the Secretariat would have had concrete information to effectively marshal UN Security Council members towards more efficacious action. The post of Special Rapporteur for the Genocide Convention – within the Office of the UN High Commissioner for Human Rights could be created. Such an office would be responsible for referring pertinent information to the Secretary General and the Security Council early enough.

The UN must also strengthen its deterrent, pre-emptive capability so that potential crimes against humanity can be defused before they explode into genocide. The crucial role served by up-to-date information, its analysis and conversion into strategic alternatives for early UN action cannot be overemphasized. Only with specialized units committed to the task of monitoring developments in potential crisis areas closely, can the UN effectively protect human rights through preventing rather than reacting to humanitarian catastrophes.

Shortly after the genocide broke out in Rwanda, there were numerous calls for reinforcement of UNAMIR I and a change in its mandate in order to ensure the protection of persons at risk. However, none of these calls were heeded even though the situation clearly warranted the taking of stronger measures. The slow response to the crises was partly because the UN focussed principally on the question whether it was possible to enforce peace. Having rejected this option, the Security Council opted to do nothing.

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[4] See Dorward, David 'Rwanda" in Learning the Lessons: UN Interventions in Conflict Situations op.cit. p.94.

[5] Yearbook of the UN, 1994 op. cit. p.1072

Where genocide or acts against humanity are shown to have occurred, and the Security Council considers that previous measures taken by the UN were inadequate to address the crisis, the Council need not wait for further empirical evidence to justify the adoption of a different policy option. Similarly, the Security Council should not limit itself to a particular kind of measure while undertaking humanitarian interventions. It is best to maintain a clear conceptual grasp of what the main options are and to keep all options open for maximum flexibility.

Humanitarian intervention should be understood to present a range of policy options to the Security Council (from the support of humanitarian aid to the securing of 'safe areas'). Humanitarian intervention does not necessarily have to entail disarmament or peace enforcement measures. Each crisis is unique in its history and in its sociology. Nothing short of an objective understanding of each crisis and its nature will contribute to its management. To be successful, therefore, humanitarian intervention must be informed and flexible. It is a question of finding the best combinations of options for each unique situation. What does not work in Somalia, properly conducted, may succeed in Rwanda.

Lastly, where the evidence, as collected and analyzed from central units shows that acts of genocide or crimes against humanity have occurred, the UN should use the right definition. The international community should have a responsibility to name acts of genocide correctly when they occur.

African Regional Arrangements

The Rwanda crisis demonstrated that the UN's capacity to undertake humanitarian interventions is limited because of financial and logistical capacity constraints. Great powers have little incentive to intervene in internal conflicts especially where such interventions pose substantial risks. Given the increasing demands that threaten to outstrip the UN's limited resources and the reluctance of the west, and especially by the permanent members of the Security Council to intervene, it is desirable to shift some of the burden of enforcement of human rights to regional arrangements. By giving regional organizations the ability and incentive to quickly and vigorously defend and safeguard human rights throughout the world, the UN will possess a powerful tool for protecting the interests of all humanity.

Indeed, Article 52 of Chapter VIII of the UN Charter recommends that the Security Council make use of regional arrangements in dealing with "matters relating to the maintenance of international peace and security". The UN Secretariat has also expressly urged Africa to play a more active role in addressing crisis that break out on the continent. According to Kofi Annan, Africa "must even more forcefully take charge of formulating its own responses to the challenges and opportunities that abound".[6] In a speech to the Security Council, in 1997, the UN Secretary General acknowledged the consensus that the solution to Africa's problems rests "with Africans themselves".[7] The Secretary General also challenged the international community to think how best it could accompany the Africans in the endeavour to find solutions.

During a summit meeting of the Security Council on 7th September 2000, greater international financial, political and military support for African peacemaking and peacekeeping efforts was strongly endorsed.[8] While calls within the UN have been made for support of regional and sub-regional initiatives, member states have also been encouraged to contribute to UN and OAU trust funds for conflict prevention and peacekeeping.[9] Support for regional initiatives is necessary, according to Annan, because the 'UN lacks the capacity, resources and expertise to address all problems that may arise in Africa'. It is also desirable because wherever possible, 'the international community should strive to complement rather than supplant African efforts to resolve Africa's problems'.[10]

African regional organizations such as the OAU, the Economic Community of West Africa States (ECOWAS), the Southern African Development Community (SADC), and the Inter-Governmental Authority on Development (IGAD) have demonstrated a willingness to play a more active part in regional peace and security. Former South African President Nelson Mandela, articulated a broad defence of intervention at the 1998 OAU Summit in Ouagadougou:

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[6] Quoted by Salim Lone 'Annan intensifies UN involvement in Africa crises' *Africa Recovery*, Vol.12. No.1 August 1998, p.16.
[7] Novicki, M.A 'UN Security Council focuses spotlight on African conflicts' *Africa Recovery*, Vol.11 No.2, October 1997, p.1.
[8] Fleshman, Michael 'Reform plans dominate Security Council debate on peacekeeping in Africa' *Africa Recovery*, Vol.14, No.3 October 2000, p.10.
[9] Salim Lone 'Annan intensifies UN involvement in Africa crises' op.cit. p.21.
[10] Ibid.

> Africa has a right and a duty to intervene to root out tyranny...we must all accept that we cannot abuse the concept of national sovereignty to deny the rest of the continent the right and duty to intervene, when behind those sovereign boundaries, people are being slaughtered to protect tyranny.[11]

A number of African countries and the OAU took a diplomatic lead in seeking a solution to the conflict in Rwanda prior to the genocide. The OAU. played a critical role in negotiating the series of agreements, from N'Sele in March 1991 to Arusha in August 1993, that created prospects for peace and democracy. In 1991, the OAU was the first to put together a group of military observers to monitor the cease-fire. However, while the OAU and African states, who were the most immediate stakeholders in the Great Lakes region, were active during the mediation phase of the Rwandan conflict, they were not equipped to participate effectively in the monitoring and peacekeeping phase.

Regional participation in preventive diplomacy should be carried over into peacekeeping so as to ensure continuity between mediation and implementation. In developing a relationship between the UN and regional bodies in matters of preventive diplomacy and peacekeeping, regional bodies should be given a greater role and capacity to deal with regional conflicts.

Stronger UN partnerships with regional and sub-regional arrangements are crucial if the international community is to respond speedily to human rights crisis. Nevertheless, in cases where international peace and security is threatened as a result of massive human rights violations, and forceful intervention is contemplated by regional initiatives, the Security Council must retain its role as the primary custodian of international peace and security. Humanitarian intervention must be undertaken under the authorization of the Security Council. Article 53 provides that 'no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council'. Only through this condition can the UN ensure that regional initiatives commit themselves to observe international norms of behaviour and keep within the recognized boundaries of humanitarian intervention.

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[11] Quoted by Chesterman, Simon 'Humanitarian Intervention : Perspectives From Africa' at www.ipacademy.org/About IPA/AbouMiss_body.

The UN should be the only body that sanctions action, sets parameters and monitors implementation of forceful intervention and, where necessary helps finance and provision such action.

This is extremely important especially in view of the fact that the shared interest in the public good by the regional actors is often accompanied by a unilateral interest in obtaining specific favourable outcomes. Regional actors frequently have stakes in the conflicts they wish to intervene in. They may be committed to one side or another and stand to benefit by influencing the outcome. Sometimes they even are active participants.

There is, nonetheless, a case to be made for the UN supporting regional arrangements in humanitarian interventions. States near to a country in conflict suffer most from the destabilizing consequences of war in their area. They receive the refugees and bear the political, social and economic consequences, willing or unwilling, of combatants from neighbouring countries seeking sanctuary. Moreover, involvement by regional powers or organizations is less likely to be perceived as illegitimate interference than would involvement by extra-regional organizations. Also, issues of local conflict are more likely to be given full and urgent consideration in regional gatherings than in global ones; the latter having much broader agendas and many more distractions.[12] Regional arrangements would therefore have the advantage of greater knowledge and sensitivity with regard to the basis of the conflict.

However, while regional arrangements in Africa may be appropriate instruments for humanitarian intervention in theory, their organizational, financial and military capacities, and as their fund of experience, are likely to be vastly inferior to those of the United Nations operations. The UN should therefore keep in mind the limited resources of regional organizations when authorizing them to deal with conflicts. UN cooperation and support of regional arrangements may take a number of forms, including consultation, mutual diplomatic support, operational support and technical assistance, co-deployment of forces, and joint operations.

[12] Weiss T. et. al (eds).The UN and Changing World Politics (Westview Press, Boulder, 1994) p. 35

Coordinating the Training and Use of African Troops in UN Humanitarian Interventions in Africa

In the light of the reluctance portrayed by great powers in intervening in dangerous situations, there is a lot to be said for troops coming from the region of the crises. It is encouraging to note that even before Boutros-Ghali decided on an all-African force for UNAMIR II, a number of African countries had made significant efforts to protect Tutsis in danger. Following the withdrawal of the bulk of UNAMIR I troops, Ghana (whose contingent of troops constituted one of the largest offered by member states to the operation) remained throughout the killings and was active diplomatically in trying to seek an end to the massacres within the OAU's context. Tunisia (whose handful of soldiers protected more than 600 threatened Tutsis and moderate Hutus) and Senegal as well, played truly remarkable and instrumental roles.

It has been established that 'in contrast to the long tradition of developed countries providing the bulk of the troops for UN peacekeeping operations during the organization's first fifty years, in the last few years 77 percent of the troops in formed military units were contributed by developing countries.[13] Hence, plans to strengthen rapid response by African peace-keeping forces (e.g. the African Crisis Response Initiative, spearheaded by the U.S) should be carried forward.

Systems of planning and response to humanitarian crises should go well beyond focusing on the ability to deploy troops with speed. They must include , for example, planning strategies. The UN can support regional contributions through creating a common standard and set of procedures for contingents that could be used during pre-mission training at the national level. The Secretariat could send a team to confirm the preparedness of each potential troop contributor prior to deployment. The training would have to be carried out on an ongoing basis.

A system of UN sponsored regional troops may be far from ideal. It may pose many risks. However, in an environment of few alternatives – a minimal great power role and a grossly under-funded and under-supported U.N, there may be no other practicable way for the international community to undertake humanitarian intervention.

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[13] See The Report of the Panel on United Nations Peace Operations UN Doc. A/55/305 – S/2000/809. See also Http://www.reliefweb.int/library

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