

**AN ANALYSIS OF NORMS REGARDING HUMANITARIAN  
INTERVENTIONS IN THE EAST AFRICAN REGION 1994 -2011**

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## DECLARATION

I, Irene A. Oloo declare that this dissertation is my original work and has not been submitted for the award of a degree in any other university.



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This project has been submitted for examination with my approval as the appointed university supervisor



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Signature

13/11/2012  
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Date

**DR. IBRAHIM FARAH PhD**

## **DEDICATION**

I dedicate this work to my family members, who taught me that the best kind of knowledge to have is that which is learned for its own sake. I also dedicated it to my son, who taught me that even the largest task can be accomplished if it is done one step at a time. His support, encouragement, and constant love have sustained me throughout.

## **ACKNOWLEDGEMENT**

I acknowledge and give praise to the Almighty God who makes all things beautiful in his time. He guided me with his unlimited love throughout my period of my research and gave me strength when all hope was gone. To God be all glory

I am extremely grateful to my project supervisor, Dr. Ibrahim Farah. His sage advice, insightful criticisms, and patient encouragement aided the writing of this project in innumerable ways. Your wise counsel and professionalism helped me to coordinate my scattered ideas and develop them with more focus and direction.

Finally, there are people in everyone's lives who make success both possible and rewarding. I wish to express my deepest depth of gratitude to my Family, friends and fellow colleagues in college for their encouragement and moral support in the realization of this important goal. I may not mention everyone by name, but I sincerely appreciate you. This study has been made possible due to your generous support through prayer and constant encouragement. God richly bless you.

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## **ABSTRACT**

Standard analytic assumptions about states and other actors pursuing their interests tend to leave the sources of interests vague or unspecified. The contention here is that international normative context shapes the interests of international actors and does so in both systematic and systemic ways. Unlike psychological variables that operate at the individual level, norms can be systemic-level variables in both origin and effects. Because they are inter subjective, rather than merely subjective, widely held norms are not idiosyncratic in their effects. Instead, they leave broad patterns of the sort that social science strives to explain. The study concludes that some the actors in the humanitarian intervention process are serving the interest of their own state actors or sub-state actors through which political gains are scored and are more likely to undermine peace efforts.

International law can be read as either allowing or forbidding international humanitarian intervention, and the legal uncertainty around humanitarian intervention is fundamental and irresolvable. Contradictory and plausible interpretations about the legality of any act of intervention exist simultaneously, and neither can be eliminated. This does not mean that the law is unimportant; there are evident costs and benefits to states in being seen as following the rules. It means instead that law and law following should be seen as resources in the hands of states and others, deployed to influence the political context of their actions. The study further concludes that here is dearth of proper legal framework and pillar of the UN system to adhere to during humanitarian interventions. This is mainly witnessed by unclear and vague legal framework, which results to different interpretation from different individuals.

Finally the study concludes that norms regarding humanitarian interventions in the east African region are new issues of concerns which need to be addressed through concrete policies as well as practical initiatives. This is due to the fact that the current situation of humanitarian intervention in eastern Africa is wanting in different direction. The researcher recommends that humanitarian intervention bodies; states; or organizations should ever aim to be neutral; impartial and to act with consent of the main parties to the conflict. There is no consensus over the legality of intervention, in part because there is no consensus over the sources of international law more generally. The intervention problem is inseparable from questions that have been at the heart of international law for centuries, and that we cannot expect to be answered in order to reconcile the different views on humanitarian intervention.

The legality of humanitarianism is therefore contingent on one's theory of how law works and changes. The law may well be incoherent, and it may be unable to distinguish between compliance and noncompliance, but it remains politically powerful and therefore important. The challenge for scholars is to explain how it is that the commitment to the rule of law coexists with this fundamental ambiguity. The study further recommends that proper legal framework, policies and UN system should be formulated in order to enhance effectiveness of humanitarian intervention.

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# CHAPTER ONE

## 1.0: INTRODUCTION TO THE STUDY

The recent pattern of humanitarian interventions raises the issue of what interests intervening states could possibly be pursuing. In most of these cases, the intervention targets are insignificant by any usual measure of geostrategic or economic interest. Why, then, do states intervene? This essay argues that the pattern of intervention cannot be understood apart from the changing normative context in which it occurs. Normative context is important because it shapes conceptions of interest.

Standard analytic assumptions about states and other actors pursuing their interests tend to leave the sources of interests vague or unspecified. The contention here is that international normative context shapes the interests of international actors and does so in both systematic and systemic ways. Unlike psychological variables that operate at the individual level, norms can be systemic-level variables in both origin and effects. Because they are inter subjective, rather than merely subjective, widely held norms are not idiosyncratic in their effects. Instead, they leave broad patterns of the sort that social science strives to explain.

Many empirical studies have fronted theoretical understanding in line to humanitarian intervention as a state using military force against another state when the chief publicly declared aim of that military action is ending human rights violations being perpetrated by the state

against which it is directed."<sup>1</sup> The other meaning of humanitarian intervention is the entry into a country of the armed forces of another country or international organization with the aim.

Realist and liberal theories do not provide good explanations for this behavior. The interests that these theories impute to states are geostrategic and/or economic, yet many or most of these interventions occur in states of negligible geostrategic or economic importance to the interveners. Thus, no obvious national interest is at stake for the states bearing the burden of the military intervention in most if not all of these cases. Somalia is perhaps the clearest example of military action undertaken in a state of little or no strategic or economic importance to the principal intervener. Similarly, the states that played central roles in the unmilitary action in Cambodia for instance were, with the exception of China, not states that had any obvious geostrategic interests there by 1989; China, which did have a geostrategic interest, bore little of the burden of intervening.

Realism and liberalism offer powerful explanations for the Persian Gulf War but have little to say about the extension of that war to Kurdish and Shiite protection through the enforcement of UN Resolution 688. The United States, France, and Britain have been allowing abuse of the Kurds for centuries. Why they should start caring about them now is not clear. Conflicts are endemic in society and as Davies<sup>2</sup> observed, the world is not becoming any less-conflictual. In fact, conflicts in the modern international system continue changing in nature and frequency<sup>3</sup>, meaning that the term 'post conflict' is itself arguable. Because of this aspect, it becomes

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<sup>1</sup> Marjanovic, Marko (2011-04-04) Is Humanitarian War the Exception?

<sup>2</sup> Davies, Lynne, *Education and Conflict: Complexity and Chaos*, (London: RoutledgeFalmer, 2004), p.3

<sup>3</sup> Kagawa, F., "Emergency Education: A Critical Review of the Field" in *Comparative Education*, Vol. 41, No.4 (2005), pp.487-503

challenging to develop evaluative and concrete theoretical research into conflict interventions and reconstruction and how normative humanitarian intervention fits into this phase: this in turn means that practitioners in the field are left to refer to documents by fellow practitioners in order to map reality to possible success.<sup>4</sup> On the contrary, humanitarian interventions ought to be viewed as a transition towards responsibility to protect.<sup>5</sup>

### 1.1 Research problem

Studies on the normative understandings of humanitarian intervention have been the subject of much recent controversy not only within the academic community but also within international organizations, nation-states, and nongovernmental organizations (NGOs). At the heart of the debate is the tension between the principle of state sovereignty (a defining pillar of the UN system and international law) and emerging international norms related to the use of force for humanitarian purposes.

The research provided a comprehensive treatment of the legal issues and presents the case against the existence of a right of humanitarian intervention. Studies have frequently outlined that timely humanitarian intervention play a major role in conflicting societies. Damaged by conflict, the reconstruction and restructuring of such societies as they build the basis for reform should work at a normative manner as an important tool. It is not enough to restore humanitarian activities in a war torn nation and to offer humanitarian relief when the appropriate need for it is

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<sup>4</sup> See Tomlinson, K., and P. Benefield. *Education and Conflict: Research and Research Possibilities*. National Foundation for Educational Research, (Slough, Berkshire, 2005)

<sup>5</sup> Ibid. Davies (2004), p.182

already messed. What is really required at the end of horrible experiences like genocide, Rwanda for example, are timely efforts towards shaping collective memory.

## **1.2 Objective of the study**

### **1.2.1 Broad of objective**

To critically investigate the normative understanding regarding humanitarian interventions in the East African region.

### **1.2.2 Specific objective**

- i. To establish the understanding of the current humanitarian interventions, interests of the state actors and sub-state actor.
- ii. To investigate into legal framework adhered to and pillar of the UN system during humanitarian interventions
- iii. Examine the various policies as well as practical initiatives that guide humanitarian intervention activities in Kenya.

## **1.3 Literature Review**

Relevant literature that informs this research substantiates the importance for the need to exercise viable humanitarian intervention framework. This literature shall be divided into three sub-themes namely-literature current Humanitarian policy, literature on controversy in the field principles and its core mandate of R2P and literature on Normative understanding in humanitarian advocacy.

### 1.3.1 Humanitarian Policy

In the last two decades, humanitarianism has experienced tremendous growth, as both a field of endeavor and as a topic of scholarly research<sup>6</sup>. In the tradition of the International Committee of the Red Cross (ICRC), humanitarianism is traditionally associated with impartial, neutral, and independent actions undertaken to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. Following on recent scholarship, this literature review defines humanitarianism as “the desire to relieve the suffering of distant strangers<sup>7</sup>”.

Concurrent with the growth of the humanitarian sector, the field of humanitarian studies has experienced rapid development, together with its cognate fields of refugee studies and development studies. Currently, the landscape of humanitarian research consists of a handful of prominent think tanks and centers of academic learning, including the Feinstein International Center (Tufts University, USA), the Humanitarian Policy Group (Overseas Development Institute, UK), and Humanitarian Outcomes (UK). Humanitarian-focused journals include the *Journal of Humanitarian Affairs*, *Refugee Studies*, and *Disasters*; scholarship is also published in mainstream academic journals ranging from *International Organization* to *Millennium* to *Volunteers*. Over the last two decades, a significant number of books have also been published on the study. This literature review concentrates on one aspect of this research, namely on a

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<sup>6</sup> Dallaire, Roméo, 2004 *Shake Hands With the Devil: The Failure of Humanity in Rwanda*, (United Kingdom, Arrow Books)

<sup>7</sup> George, Alexander L. & Bennett, Andrew, 2005 *Case Studies and Theory Development in the Social Sciences*, (Cambridge, Massachusetts, MIT Press)



selection of important recent policy-focused articles; academic work is referenced as appropriate. Though there are exceptions to this rule, including some studies, this must be recognized as a gap. In a large part, this finding reflects the considerably limited availability of data and the difficulty with which complex humanitarian issues lend themselves to measurement in the first place. This is generally true of the academic literature as well, though a fair amount of recent scholarship has come from International Relations (IR). Within this, some of the most widely cited research adopts a rationalist perspective, which tends to emphasize actors making strategic choices based on the structure of constraints and incentives.

Straus, Scott <sup>8</sup> "The NGO Scramble: Organizational Insecurity and the Political Economy of Transnational Action" (2002), is one of the most frequently cited examples of this approach. Cooley and Ron argue that competitive pressures and strategic logics explain the inability of aid agencies to respond satisfactorily to the arming of the refugee camps in Goma, DRC after the Rwandan genocide. Carpenter's work on humanitarian advocacy network adopts a combination of quantitative and qualitative methods to assess network features and their impact.

#### **1.4.2 Current controversy in the field principles and its core mandate of R2P**

Protection of civilians, the situation for women in war and conflict, humanitarian space, international humanitarian law and humanitarian principles are situations of great concern during

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<sup>8</sup> Straus, Scott, „Darfur and the Genocide Debate 2005", *Foreign Affairs*, Vol.84, No.1 (2005), pp.123-133

crisis<sup>9</sup>. The growth in the sector and the response to certain crises notably Rwanda (1994), but also the Southeast Asian Tsunami (2004) has precipitated efforts among aid workers to elaborate common values and standards. Another key driver for research on humanitarian principles is the increasing involvement of military personnel in humanitarian work, represented most clearly by the concept of integration. Integration has four principal components comprehensive mission planning, strategies to achieve outcomes, evaluation of the humanitarian impact of decisions, and joint assessment of operations as they unfold<sup>10</sup>.

One of the more important recent debates in IHL addresses the responsibility to protect (R2P), which is the idea that sovereignty is contingent on state behavior. R2P embodies the idea that state sovereignty implies the responsibility of a state for its people, and when a state is unable or unwilling to stop serious harm to its population, sovereignty yields to the international responsibility to protect. R2P has remained a controversial topic in the decade since the original report was published; Byers deems it well-intentioned, but abstract in its principles<sup>11</sup>; other studies have questioned whether R2P in fact implies the dangerous imposition of liberal norms of intervention globally, with the US-led invasion of Iraq as exhibit<sup>12</sup>. Indeed, as the debate over NATO actions in Libya and the lack of authorization for similar actions in Syria demonstrates, questions of who decides what constitutes breach and who intervenes are scarcely more resolved

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<sup>9</sup> Kreps, Sarah E., 2007 "The United Nations-African Union Missions in Darfur: Implications and Prospects for Success", *African Security Review*, Vol.16, No.4, pp.66-79

<sup>10</sup> Forster, Ann, "The Evolution of International Norms", *International Studies Quarterly*, Vol.40, No.3 (1996), pp.363-389

<sup>11</sup> Byers, Alex J., "Responsibility to Protect or Trojan Horse? 2005 The Crisis in Darfur and Humanitarian Intervention after Iraq", *Ethics & International Affairs*, Vol.19, No.2 (2005), pp.31-53

<sup>12</sup> Chandler, Abram & Chayes, Antonia Handler, 2004 "On Compliance", *International Organization*, Vol.47, No.2, pp.175-205

than when R2P was first proposed. Although discussed separately here for purpose of analysis, research relating to the protection of civilians and women are intimately linked to the wider study of international humanitarian law. Indeed, the distinction between civilians and combatants is a core principle of IHL<sup>13</sup>.

The policy-oriented literature is broad in scope; as a general statement, key concerns tend to be with assessing proportionality of response and protection of civilians in the context of innovations in the practice and technology of warfare. For instance, a recent article by Michael Schmitt assesses the impact of precision weaponry on civilian protection<sup>14</sup>. Protection is also closely linked to the theme of human security, discussed separately in this review.

#### 1.4.2 Normative understanding in humanitarian advocacy

With the rise of constructivism in the discipline of international relations, there is a growing interest in norms. The literature in this field tends to focus on one of two things: the influence of norms on behavior in the international arena, or the evolution of norms<sup>15</sup>. Although this research is firmly focused on the latter, it is worth briefly addressing the former in order to establish why and how norms influence actors to demonstrate that the study of norm dynamics is worthwhile.

First, however, a definition of norms would be useful. Although the precise definition of a norm has been contested in the past, much of the current literature accepts the definition of a norm as a

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<sup>13</sup> Straus, Scott, „Darfur and the Genocide Debate 2005“, *Foreign Affairs*, Vol.84, No.1 (2005), pp.123-133

<sup>14</sup> Michael Schmitt, Shawn H., „The Lessons of Intervention in Africa“, *Current History*, 1995 Vol.94, No.591, pp.162-166

<sup>15</sup> Carpenter's Waal, Alex, 2007, „Darfur and the Failure of the Responsibility to Protect“, *International Affairs*, Vol.83, No.6 (2007), pp.1039-1054

standard of appropriate behavior for actors with a given identity".<sup>16</sup> The most important thing to emphasize here is the notion of *appropriate* behavior. There are many reasons why nations should be concerned with the concept of norms in international relations. The contention here is that norms only influence the behavior of weaker states as dominant states are acting as they please by setting the normative agenda in the first place. Without engaging in the debate to too greater an extent – for it is not the remit of this paper – the neo-realist understanding of norms seems to be lacking on three accounts.

First, it fails to explain the adoption of norms that are not aligned with the material or security interests of powerful states, for instance norms against slave trading or those that constrain the type of force used during war; in other words, norms that seem to be particularly other-regarding. Second, neo-realists simplify the nature of interests. As the compliance with other-regarding norms would suggest, it seems inaccurate to characterize state interests simply in terms of power, wealth and security. Moreover, a state's interests are a function of its identity, how it sees itself and how it wants others to view it within the international system. Neo-realists fail to acknowledge the power of internal norms and domestic perceptions of appropriateness in shaping international interests. Third, the neo-realist account of norms fails sufficiently to account for normative change in the international system. Norms change even in times of stasis in international power politics<sup>17</sup>.

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<sup>16</sup> Martha Finnemore & Kathryn Sikkink, „International Norm Dynamics and Political Change“, *International Organization*, Vol.52, No.4 (1998), p.891

<sup>17</sup> Clark, Walter & Herbst, Jeffrey, 1996, Somalia and the Future of Humanitarian Intervention“, *Foreign Affairs*, Vol.75, No.2, pp.70-85

This paper therefore adopts a constructivist approach to norms. This acknowledges that actors' interests and identity are social constructs, influenced by norms (international and domestic), and that, in turn, norms are social constructs, advocated for and contested by various actors in international society. Kees Van Kersbergen and Bertjan Verbeek describe this as the mutually constitutive nature of international norms: „interacting actors construct norms; norms guide the actors' behavior; and norms may change the definition of the actors' preferences and even identity.“<sup>18</sup> Norms do not just rise and fall in correspondence with shifts in the balance of power between states, but emerge in response to new issue areas, as a result of domestic agendas pushed into the international arena and even as a result of individual moral convictions. Such an outlook makes research into norm dynamics distinctly more interesting and also necessary, as a better understanding of normative change can give us a better understanding of how to improve international cooperation and reduce misunderstanding and conflict.

Accordingly, they provide a continuum for the evolution of norms, on which I will attempt to plot the norm of humanitarian intervention at the time of each of the three interventions studied in this research. Without going into semantics, interventions should be beyond human protection, in that while protection builds with what is already in place, intervention actually seeks to overhaul a system that is in place and which is deemed unworkable, in order to create a new and a working base from which the building can continue<sup>19</sup>. This is the perspective that this study will

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<sup>18</sup> Kees Van Kersbergen & Bertjan Verbeek, „The Politics of International Norms: Subsidiary and the Imperfect Competence Regime of the European Union“, *European Journal of International Relations*, Vol.13, No.2 (2007), p.220

<sup>19</sup> Adelman, Howard, 2003, „Review: Bystanders to a Genocide in Rwanda“, *The International History Review*, Vol.25, No.2, pp.357-374

take in examining the norms regarding humanitarian intervention with support reference to east African region. Bearing in mind the above study, the aim of carrying out this study is to bridge this gap in theory and practice. The presentation in the above literature review therefore has brought to light a critical and relevant literature gap of deficiency in norms regarding humanitarian intervention. Theoretically, the link between normative understanding and effective and timely execution of humanitarian intervention is influenced by experiences that war-torn societies have gone through.

### **1.5 Justification of the study**

The academic justification for carrying out the study is based on the apparent gap in the literature on education in norms regarding humanitarian intervention reconstruction. Theoretically, the link between normative understanding and effective execution of humanitarian intervention is influenced by experiences that war-torn societies have gone through. The critical need to focus on in norms regarding humanitarian intervention as a key component of effective intervention is based on the need to restore stability, promote welfare and growth, and to meet the MDGs and EFA goals<sup>20</sup>. However, if norms regarding humanitarian intervention are to be critically understood, it should be part of the responses to scholarly reference realities right from the start. Understanding the framework involved for humanitarian intervention are intended to provide clear relief efforts that ultimately contribute towards achieving stability and normative humanitarian process reconstruction. This study explored existing picture in humanitarian intervention strategies in the present system as well as the practical and academic gaps that exist in the absence of appropriate evaluation initiatives. The practical justification in carrying out this

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<sup>20</sup> See World Bank, *Reshaping the Future: Education and Postconflict Reconstruction*, (Washington, DC.: World Bank, 2005)

research is supported by the existing gap in concrete policies as well as practical initiatives that humanitarian intervention activities in East African region, more specifically geared towards the purpose of intervention as a tool in fragile situation. Although activities in normative understanding in all intervention are geared towards relief efforts that ultimately contribute towards achieving stability for reconstruction, it is important to search for long term intervention strategies which can not only address the humanitarian intervention alone but also promote positive cohesion reconstruction and joint infrastructural development of the Nation left behind. This study hopes to show how best education can be geared toward achieving such goals.

So far, no study has been carried out in Kenya on investigating the normative understanding regarding humanitarian interventions in the East African region. It is anticipated that the findings in this study was important towards highlighting applicable standards in education that guide the decisions in humanitarian intervention. Above all, the findings of this study may lay the groundwork for further investigation and debate on the problem. Lastly, the results of this research were beneficial to a number of stakeholders and decision makers alike. These include conflict managers and peace practitioners who compose the main actors that provide humanitarian intervention activities and can thus provide best practices in terms of activities provided. Similarly, the findings were beneficial to educators, politicians and administrators by providing lessons from which they can learn and shape national policies.

## **1.6 Hypotheses**

1. The actors in the humanitarian intervention process are serving the interest of their own state actors or sub-state actors through which political gains are scored and are more likely to undermine peace efforts.

2. There is a gap of proper legal framework and pillar of the UN system to adhere during humanitarian interventions
3. The norms regarding humanitarian interventions in the east African region are new issues of concerns which need to be addressed through concrete policies as well as practical initiatives.

### **1.7 Theoretical Framework: Liberal Critical Theory**

Given the dilemma inferred in the literature review in linking theory with practice of normative knowledge and humanitarian intervention, there emerges the need to advance the potential added value of education to fill the gap in this study. Bearing in mind that responsibility to protect is a basic human right; the argument for humanitarian intervention should therefore seek to address ontological concerns while incorporating critical perspectives. For this reason, this study was conducted following a liberal critical theory as advanced by Habermas and later developed by Hegel and Marx.<sup>21</sup>

Liberal critical theory stems from a normative concern and recognizes values, norms and ideals in society. It is liberal in the sense that it does not evolve from a specific ideology but is derived from a broad range of normative concerns. Such concerns arise from recent theoretical developments which recognize the effect of processes of discrimination and exploitation based on key dimensions of human life such as race and ethnicity; and less emphasis on the ideas of Hegel's dialectics and Marxism<sup>22</sup>. Critical theory is therefore used as a tool for analysis and

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<sup>21</sup> Torres, Carlos A. "Critical Theory and Political Sociology of Education: Arguments" in Popkewitz, Thomas F. et. Al. (eds.) *Critical Theories in Education: Changing Terrains of Knowledge and Politics*, (London: Routledge, 1999) pp.87-

<sup>22</sup> Njoroge, Raphael (2004), 65-67



criticism. According to Morrow and Brown 'critical imagination is required to avoid identifying where we live here and now as somehow cast in stone by natural laws'<sup>23</sup> In this study, a critique of the role of humanitarian intervention is analyzed from a normative concern that ought to be realized. The established facts of this intervention processes are analyzed vis-a-vis the norms and ideals that should be in place in order to obtain basic concerns. Using the framework of critical theory, the success of the dependent variable, norms regarding humanitarian intervention, is critiqued based on the independent variable, policies and framework. Normative theoretical issues have been advanced that point to the fact that conflict is endemic in society and that it is also dynamic by constantly shifting its nature, it therefore becomes complex defining the idea of 'wars and conflict' more so when these conflicts were protracted.

Additionally, literature on the socio-psychological theories of conflict upon which conflict behaviors and interests in conflict activities were based means that it becomes difficult to anticipate actions of actors in the society and group relations as well and how these respond to any given input in the system. Add to this is the fact that no universally accepted typology for humanitarian intervention has been developed. Crammer contends this aspect by analyzing that humanitarian intervention is often shaped by the processes that ended the conflict and rarely by the initial conditions that triggered it.<sup>24</sup> Consequently, by employing liberal views towards adopting appropriate norm as a strategy in humanitarian intervention, normative theory is used to contribute towards developing new ways of supporting healing and forming. In this approach the study was aided in its Attempts to understand modern humanitarian intervention concerns,

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<sup>23</sup> Morrow R. A, and D.D. Brown, *Critical Theory and Methodology*. (London: Thousand Oaks, 1994) p.11

<sup>24</sup> Crammer, Christopher, *Civil War is Not a Stupid Thing: Accounting for Violence in Developing Countries*, (Hurst & Co., 2006)

especially those instigated by non-state actors is a major concern. Indeed a constructivist approach does not deny that power and interest are important. They rather ask a different and prior set of questions: it asks what interests are, and it investigates the ends to which and the means by which power was used.

### **1.8 Methodology of the research**

This research employed a descriptive research design to obtain and analyze data on humanitarian intervention process. This approach was chosen because the study involves investigating variables which are not easy to quantify. Questionnaire and interview guide was used for primary data collection and written materials and documents from the archives were used in collecting secondary data. The study targeted actors in humanitarian interventions as well as in the normative section, the sampling of the population for this study was purposive, the specific respondents were selected from the population because they hold credibility to the study. The initial respondents are persons known to the researcher in this sector as well as in various non-governmental agencies.

They included 1 lecturer from Catholic University, 2 lecturers from University of Nairobi, 3 teachers from tertiary learning institutions in Kenya, 3 students from the Institute of Diplomacy, University of Nairobi, member staff of UN and 1 staff from UNHCR, 3 employees from non-governmental organizations, 1 representative of the governments of Uganda and Tanzania in Kenya. Additionally, some informal discussions were held with different persons from the education sector in Kenya. The data analysis was qualitative and took place concurrently with data collection. Using mapping aspects, the various variables were categorized on an ordinal scale. This provided the most manageable way of measuring the variables in the study.

The themes that emerged from the interviews, questionnaires and from document analyses formed the basis of further collection and summary. The analysis of the final data made it possible for themes to be identified and findings to be presented descriptively. The researcher expect to have limited scope to examine the emerging patterns of norms regarding humanitarian interventions in the east African region since the scarcity of data on emerging patterns of norms regarding humanitarian interventions in the east African region to inform this study makes the cross-national comparisons of data with the study situation problematic.

### **1.10 Chapter Outline**

- Chapter I – This chapter details the background content to the topic of research, problem statement, objectives of the study, study justification the Literature Review, theoretical orientation, study methodology employed and finally the chapter outline**
- Chapter II – Humanitarian Intervention in the East Africa Region: An Overview**
- Chapter III – An Analysis of Norms Regarding Humanitarian Interventions in the East African Region**
- Chapter IV – Emerging Issues**
- Chapter V – Conclusion**

## CHAPTER TWO

### HUMANITARIAN INTERVENTION IN THE EAST AFRICA REGION: AN OVERVIEW

#### 2.0: Introduction

The previous chapter dealt with the background of the study including reasons for conducting the study and objectives that the research seeks to meet. Moreover, it contains problem statement, objectives of the study, study justification the Literature Review, theoretical orientation, study methodology employed

This chapter covers the historical development of humanitarian interventions in different part of the world at different time. Further more the chapter has covered the Liberal critical theory its counterpart the realism theory and how their relevance and application to humanitarian interventions.

Humanitarian intervention debates are constantly so compelling because it involves the three most fundamental organizational systems of human social life: law, morality and politics. Though the doctrine is understood to have been developed originally for the protection of human beings from severe atrocities, the outcome of the practice has not always been satisfactory

The year 2004 marked the 10<sup>th</sup> anniversary of the Rwandan genocide in which 800, 000 people were slaughtered within 100 days with the whole international community as a witness. This was seen as a failure of the international community as a whole, and thus demands were raised to ensure that such catastrophes will never occur again anywhere in the future. The fundamental question here is to what extent the Rwandan genocide and the failure to intervene has changed the international apathy for humanitarian action especially in Africa. The answer is, sadly, not

much. A proof to this is the ongoing humanitarian disaster in Darfur. In spite of the nine years of separation, Darfur represented another humanitarian disaster to which the international and regional reactions have been hesitant and slow. Darfur has been looked at by many as a Rwanda in slow motion. But the Darfur case differs from Rwanda's case in the fact that it has drawn fairly reasonable news coverage and humanitarian agencies attention. This has forced the world to turn its eyes to what is happening in Darfur.

Also the crisis has followed the UN-Canadian sponsored report; Responsibility to Protect<sup>12</sup> that aimed at changing the world's understanding and practice of humanitarian intervention to transcend the traditional boundaries of state sovereignty as human security was gaining momentum. The world hoped that all these different circumstances would lead Darfur to a different path from the one Rwanda has been through. But in reality, they have only changed the context in which another humanitarian disaster has taken place. The case has been a test for humanitarian intervention as suggested in the Responsibility to Protect<sup>1</sup> Report and for the UN's vows not to allow genocide<sup>1</sup> to happen again. Darfur has proved that after almost a decade from Rwanda, the practice of humanitarian intervention is still a failure and instead of being carried out in the name of humanitarianism, it abuses the concept for its own ends.

### **2.1: Theories of Humanitarian Intervention**

The two grand theories of our time, realism and liberalism, are skeptical with regard to humanitarian intervention for different reasons. An argument in favor of humanitarian intervention must be supported by two assumptions: first that moral claims are important in

politics and second, that force can be justified.<sup>25</sup> While realism attacks the former, liberalism questions the latter. A humanitarian intervention forces liberals to decide between the liberal goods of non-violence and human rights protection. Therefore, two liberal traditions coexist: the just war tradition in favor and the non-violent tradition against humanitarian intervention. The just war doctrine as predecessor of a yet to be developed just intervention doctrine faces both a strategic and a normative challenge: it must show realism, why moral arguments matter and demonstrate pacifism why force can be morally justified.

The moral question clearly distinguishes between realists and liberals, but realists also have different opinions on the use of force. Smith describes two realist schools of thought: isolationists against and pragmatist partly in favor of intervention. It is difficult to answer the meta-theoretical question, which position is most coherent. However, Robert suggests in his description of transcendental pragmatism to adapt theories, if they cannot be questioned without a performative self-contradiction (a contradiction between language and action). An application of this criterion to the above mentioned approaches leads to the following results.<sup>26</sup> <sup>27</sup>Powers demonstrates a problem in the realist argument: "Realists use their apparently non-ethical assumptions to camouflage a specific normative vision on how a nation's interest ought to be defined. Thus, the traditional realist position ends almost ironically: beginning with a dismissal of the relevance of ethical concerns to the issue of intervention, realists often end up offering an

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<sup>25</sup> J.L. Holzgrefe and Robert O. Keohane (2003) (eds), *Humanitarian Intervention. Ethical, Legal, and Political Dilemmas* (Cambridge, Cambridge University Press, 2003)

<sup>26</sup> Ibid

<sup>27</sup> Powers, S. (2002), *A Problem from Hell. America and the Age of Genocide*, Basic Books, New York, NY,

implicit (or at least easily inferred) normative argument against interventionist foreign policy on grounds of prudence and moderation.<sup>28</sup> This is a classic example of a performativity self-contradiction and substantially weakens the persuasiveness of the realist argument. Therefore, the realist attack that liberals use "too" many moral implications must be rejected. Regarding pacifism, however, there is a valid realist argument. Since the non-violent tradition must be grounded in an ethic of intention (as opposed to an ethic of responsibility), Weber's arguments against this type of ethics apply. The problem of pacifism is that force may be necessary to stop violence. It is inconsistent to condemn such a force, if the reduction of violence is the goal.

The just war doctrine avoids these contradictions of realism and pacifism. Its central aspects (that morality is important and that force can be justified) cannot be questioned without falling into a self-contradiction. Therefore, it shall build the basis of the following analysis. The position of the just war doctrine is between realism and pacifism. It agrees to pacifism that force is prima facie wrong and to realism that the use of force may sometimes be necessary. Childress describes a conflict of values between non-violence and protection of the victims related to attempts to reduce violence.

Since it is impossible to act according to both values, Childress makes a distinction between prima facie duties and actual duties. The former constitute presumptions but they can be overridden as exceptions by the latter. According to David, prima facie duties have the "tendency to make an act right or wrong"<sup>29</sup> and actual duties refer to the act as a whole. The logic of prima facie duties therefore has three implications: first, violations of prima facie duties must be

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<sup>28</sup> Ibid

<sup>29</sup> David Held (2002), 'Law of Peoples, Law of States', *Legal Theory*

justified, second, it is impossible to fulfill all duties at the same time, therefore, some prima facie duties must be violated and third, violated prima facie duties must effect the action: "conduct of war should be as compatible as possible with the overridden prima facie obligations.

To justify the use of force, Mohammed claims that the three questions of why, when and how be answered.<sup>30</sup> Mohammed suggests massive human rights violations as a just cause for the use of force and he cites traditional criteria of the just war doctrine to answer the three questions.

## **2.2: Historical Development of Humanitarian Intervention**

### **2.2.1: The Expansion of "Humanity" and Sovereignty**

This last feature of nineteenth-century intervention, the ways in which interveners identify with victims to determine who is an appropriate or compelling candidate for intervention, changed dramatically over the twentieth century as the "humanity" deserving of protection by military intervention became universalized.<sup>31</sup>

The seeds of this change lie in the nineteenth century, however, with efforts to end slavery and the slave trade. With the abolition of slavery in the nineteenth century and decolonization in the twentieth, a new set of norms was consolidated that universalized "humanity" and endowed it with rights, among them, self-determination, which came to be equated with sovereign statehood.

These processes are obviously complex and cannot be treated adequately here. What follows is a

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<sup>30</sup> Mohammed Ayood, B.S. Chimni, Samuel M. Makinda and Nicholas J. Wheeler, (2002) Forum on Humanitarian Intervention, in the *International Journal of Human Rights*, 6, 1 (2002)

<sup>31</sup> Dallaire, R. (2003), *Shake Hands with the Devil: The Failure of Humanity in Rwanda*, Random House of Canada, Toronto,



brief discussion showing how these larger normative developments contributed to the evolution of humanitarian intervention norms.

### 2.2.2: Abolition of Slavery and the Slave Trade

The abolition of slavery and the slave trade in the nineteenth century was an essential part of the universalization of "humanity."<sup>32</sup> European states generally accepted and legalized these practices in the seventeenth and eighteenth centuries, but by the nineteenth century the same states proclaimed them "repugnant to the principles of humanity and universal morality. Human beings previously viewed as beyond the edge of humanity-as, in fact, property--came to be viewed as human, and with that status came certain, albeit minimal, privileges and protections. Further, military force was used by states, especially Britain, to suppress the slave trade. Britain succeeded in having the slave trade labeled as piracy, thus enabling her to seize and board ships sailing under non-British flags that were suspected of carrying contraband slaves.

While this is in some ways an important case of a state using force to promote humanitarian ends, the way the British framed and justified their actions also says something about the limits of humanitarian claims in the early to mid-nineteenth century. First, the British limited their military action to abolishing the trade in slaves, not slavery itself. There was no military intervention on behalf of Africans as there was on behalf of Christians. While the British public and many political figures contributed to a climate of international opinion that viewed slavery with increasing distaste, the abolition of slavery as a domestic institution of property rights was

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<sup>32</sup> Toman, J. (1996), *The Protection of Cultural Property in the Event of Armed Conflict. Commentary on the Hague Convention of 14 May 1954*, UNESCO Publishing, Dartmouth/Paris,

accomplished in each state where it had previously been legal without military intervention by other states. Further, the British government's strategy for ending the slave trade was to have such trafficking labeled as piracy, thus making the slaves "contraband," i.e., still property. The government justified its actions on the basis of maritime rights governing commerce. Slavery and slaveholding themselves did not provoke the same reaction as Ottoman abuse of Christians did.<sup>33</sup> This may be because the perpetrators of the humanitarian violations were "civilized" Christian nations as opposed to the infidel Turks. Another reason was probably that the targets of these humanitarian violations were black Africans, not "fellow Christians" or "brother Slavs." It thus appears that by the 1830s black Africans had become sufficiently "human" that enslaving them was illegal inside Europe, but enslaving them outside Europe was only distasteful. One could keep them enslaved if one kept them at home, within domestic borders. Abuse of Africans did not merit military intervention inside another state.<sup>34</sup>

### **2.2.3: Colonization, Decolonization, and Self-determination**

Justifications for both colonization and decolonization also offer interesting lenses through which to examine changing humanitarian norms and changing understandings of who is "human." Both processes colonization and its undoing were justified, at least in part, in humanitarian terms, but the understanding of what constituted humanity was different in the two episodes in ways that bear on the current investigation of humanitarian intervention norms.

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<sup>33</sup> Meron, T. (2000b), "The humanization of humanitarian law", *American Journal of International Law*, conclusion, Vol. 94 No.2, pp.278

<sup>34</sup> Meron, T. (2000b), "The humanization of humanitarian law", *American Journal of International Law*, conclusion, Vol. 94 No.2, pp.278

The vast economic literature on colonization often overlooks the strong moral dimension perceived and articulated by many of the colonizers. Colonization was a crusade. It would bring the benefits of civilization to the "dark" reaches of the earth. It was a sacred trust, it was the white man's burden, it was mandated by God that these Europeans go out into unknown (to them) parts of the globe, bringing what they understood to be a better way of life to the inhabitants. Colonization for the missionaries and those driven by social conscience was a humanitarian mission of huge proportions and consequently of huge importance.<sup>35</sup>

Colonialism's humanitarian mission was of a particular kind, however: it was to "civilize" the non-European parts of the world--to bring the "benefits" of European social, political, economic, and cultural arrangements to Asia, Africa, and the Americas. Until these peoples were "civilized," they were savages, barbarians, something less than human.<sup>36</sup> Thus in an important sense the core of the colonial humanitarian mission was to create humanity where none had previously existed. Non-Europeans became human in European eyes by becoming Christian, by adopting European-style structures of property rights, by adopting European-style territorial political arrangements, by entering the growing European-based international economy.

Decolonization also had strong humanitarian justifications.<sup>37</sup> By the mid-twentieth century, however, normative understandings about humanity had shifted. Humanity was no longer something one could create by bringing savages to civilization. Rather, humanity was inherent in individual human beings. It had become universalized and was not culturally dependent, as it has been in earlier centuries.

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<sup>35</sup> Diallo, Y. (1976), "Humanitarian law and African traditional law", *International Review of the Red Cross*, Vol. 179.

<sup>36</sup> Ibid

<sup>37</sup> Ibid

Asians and Africans were now viewed as having human rights," and among those rights was the right to determine their own political future--the right to self-determination. There is not space here to investigate in detail the origins of decolonization and accompanying human rights norms. I would, however, like to highlight three features of the decolonization process that bear on the evolution of humanitarian intervention.

First, as international legal scholars have long noted, logical coherence among norms greatly enhances their legitimacy and power.<sup>38</sup> Decolonization norms benefited greatly from their logical kinship with core European norms about human equality. As liberal norms about the "natural" rights of man spread and gained power within Europe, they influenced Europe's relationship with non-European peoples in important ways. The egalitarian social movements sweeping the European West in the eighteenth and nineteenth centuries were justified with universal truths about the nature and equality of human beings. These notions were then exported to the non-European world as part of the civilizing mission of colonialism.

Once people begin to believe, at least in principle, in human equality, there is no logical limit to the expansion of human rights and self-determination. The logical expansion of these arguments fueled attacks on both slavery and colonization. Slavery, more blatantly a violation of these emerging European norms, came under attack first. Demands for decolonization came more slowly and had to contend with the counterclaims for the beneficial humanitarian effects of European rule. In both cases, former slaves and Western-educated colonial elites were

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<sup>38</sup> Hayner, P.B. (1995), "Fifteen truth commissions", *Human Rights Quarterly*, Vol. 16 No.4, pp.597-655.

instrumental in change. Having been "civilized" and Europeanized, they were able to use Europe's own norms against these institutions. These people undermined the social legitimacy of both slaveholders and colonizers not simply by being exemplars of "human" non-Europeans but also by contributing to the arguments undercutting the legitimacy of slavery and colonialism within a European framework of proclaimed human equality.<sup>39</sup> Although logic alone is not the reason that slavery and colonialism were abolished, there does appear to be some need for logical consistency in normative structures. Changes in core normative structure (in this case, changes toward recognition of human equality within Europe) tended to promote and facilitate associated normative changes elsewhere in society. Mutually reinforcing and logically consistent norms appear to be harder to attack and to have an advantage in the normative contestations that go on in social life. Thus, logic internal to the norms shapes their development and consequently social change.

Second, formal international organizations, particularly the United Nations, played a significant role in the decolonization process and the consolidation of anti-colonialism norms. The self-determination norms lay out in the Charter, the trusteeship system it set up, and the one-state-one-vote voting structure that gave majority power to weak, often formerly colonized states, all contributed to an international legal, organizational, and normative environment that made colonial practices increasingly illegitimate and difficult to carry out. Third, decolonization enshrined the notion of political self-determination as a basic human right associated with a now universal humanity. Political self-determination, in turn, meant sovereign statehood.

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<sup>39</sup> Powers, S. (2002), *A Problem from Hell: America and the Age of Genocide*, Basic Books, New York, NY,

#### 2.2.4: Humanitarian Intervention Since 1945

Unlike humanitarian intervention practices in the nineteenth century, virtually all of the instances in which claims of humanitarian intervention have been made in the post-1945 period concern military action on behalf of non-Christians and/or non-Europeans.<sup>40</sup> In that sense, the universalizing of the "humanity" that might be worth protecting seems to have widened in accordance with the normative changes described above.

What is interesting in these cases is that states that might legitimately have claimed humanitarian justifications for their intervention did not do so. India's intervention in East Pakistan in the wake of Muslim massacres of Hindus, Tanzania's intervention in Uganda toppling the Idi Amin regime, Vietnam's intervention in Cambodia ousting the Khmers Rouges; in every case intervening states could have justified their actions with strong humanitarian claims. None did. In fact, India initially claimed humanitarian justifications but quickly retracted them. Why?<sup>41</sup>

The argument here is that this reluctance stems not from norms about what is "humanitarian" but from norms about legitimate intervention. While the scope of who qualifies as human has widened enormously and the range of humanitarian activities that states routinely undertake has expanded, norms about intervention have also changed, albeit less drastically. Humanitarian military intervention now must be multilateral to be legitimate.

#### 2.3: The Rise and fall of Humanitarian Intervention

The 1990s were a decade of humanitarian intervention. The decade began with high hopes of ending massive human rights abuses, particularly large-scale massacres or genocides, through

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<sup>40</sup> Petrasek, D. (1998), "Moving forward on the development of minimum humanitarian standards", *American Journal of International Law*, Vol. 3 No.92, pp.557-63.

<sup>41</sup> Ibid

UN intervention. These hopes vanished after the UN's failures in Bosnia, Somalia, and Rwanda, but they were succeeded by new hopes for U.S. intervention, which hopes seemed to be validated by U.S. successes in Bosnia and Kosovo and even, to a degree, in Haiti.<sup>42</sup> There were also the successful interventions carried out by Australia, with U.S. support, in East Timor in 1999 and by Britain in Sierra Leone in 2000. By the beginning of 2001, the hopes for a future in which humanitarian intervention would bring an end to the long and baleful history of genocides reached a sort of apotheosis in a major international document, *The Responsibility to Protect*. Since then, a large contingent of international lawyers has continued to develop new doctrines of limited sovereignty that would give the international community or particular international organizations the right, indeed the obligation, to undertake military intervention against a national government that is engaging in massive human rights abuses of its citizens.<sup>43</sup>

Unfortunately, even as the theory and law of humanitarian intervention have ascended to unprecedented heights, the actual practice of humanitarian intervention has been in decline. So far, the 2000s have not seen effective humanitarian intervention by anyone, be it the international community and international organizations, the United States, or others. Instead of pursuing humanitarian interventions, the United States has engaged in two wars, one in Afghanistan and one in Iraq, which the Bush administration justified in human rights terms. This is especially true in the case of Iraq, but the real impact of that war has been to make humanitarian intervention by the United States elsewhere impossible. This radically reduces the prospects for successful

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<sup>42</sup> Tutu, D. (2000), *No Future Without Forgiveness*, Doubleday, New York, NY,

<sup>43</sup> David Rieff, *A Bed for the Night: Humanitarianism in Crisis* (New York: Simon and Schuster, 2002),

humanitarian interventions in the future, while improving the prospects for undeterred and uninhibited ethnic massacres or genocides, such as has been occurring in the western Sudan.

#### **2.4: Human Interventions failure**

In the early 1990s, the answer to the question, "Who can and will intervene?" was the UN as the universal political authority, combined with ad hoc multinational forces assembled for each operation and composed of military units from several different nations. The UN had accumulated a relatively successful record of peacekeeping operations over the 1970s and 1980s this way. With the collapse of the Soviet Union, which had sometimes vetoed UN peacekeeping missions, it seemed that the UN could build upon its peacekeeping record and even expand its scope to peace-enforcing. Thus, when Somalia and Bosnia posed humanitarian problems in 1992, the major powers, including the United States, proposed this UN formula. It was also the answer initially applied to Sierra Leone when its state failed and the country fell into anarchy, murder, and mayhem.

As it turned out, each of these UN interventions in failed states became notorious failures themselves. In Somalia, the UN forces first had to be rescued by U.S. forces, and then both withdrew and left the Somalis in chaos, where the country remains even now. In Bosnia, the UN forces did not stop the ethnic massacres, which culminated in the murder of 7,000 men and boys in Srebrenica in 1995. In Sierra Leone, the UN forces had to be rescued by British forces, which then carried out an effective intervention. And in Rwanda, the UN forces were prevented by the



UN leadership in New York from stopping the genocide of 800,000 Tutsi.<sup>44</sup> There has been some slight improvement in UN interventions more recently. UN forces have been engaged in a continuing, though largely ineffective, intervention in the eastern region of the Democratic Republic of the Congo (formerly Zaire), where the anarchy and violence continue also. And since 2003, UN forces have maintained a tenuous and unstable peace in Liberia, a country that had been torn apart by a dozen years of warlord violence.

#### **2.4.1: The Ambiguous Record of Other Interventions**

The several cases in the 1990s where military intervention was clearly successful in stopping massacres were undertaken by U.S. and NATO forces (in Bosnia, in 1995, and Kosovo, in 1999); Australian forces, in East Timor in 1999; and the British, in Sierra Leone in 2000.

U.S. military forces were also able to stop the human rights abuses by the military regime in Haiti in 1994. However, the U.S.-installed successor government, the Aristide regime, perpetrated its own abuses in later years, until the United States intervened again in 2004 in order to depose it. This time, however, the U.S. military intervention was modest in scale and brief in duration. Upon the departure of American forces, a pervasive anarchy ensued. These five cases largely complete the list of successful humanitarian interventions since 1991. They are balanced by some unsuccessful ones, such as that by U.S. and UN forces in Somalia (1992–93) and by West African forces in Liberia and in Sierra Leone (the mid-1990s). Moreover, the successful cases should be compared with, and perhaps are outweighed by, the many cases of non-intervention, when massacres or genocide persisted with no intervention by the UN, a regional

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<sup>44</sup> Kraehenbuhl, P. (2004), "Humanitarian security: a matter of acceptance, perception, behavior ..."

organization, or a major power. The most notorious case was, of course, Rwanda, but the list also includes Sudan (in particular, the southern region until 2003 and the western region of Darfur since then), Burundi, and Angola. Overall, then, the historical record of humanitarian interventions is more one of failure than success.<sup>45</sup>

## 2.5: The Successful Cases of Humanitarian Intervention

The above record might suggest ways humanitarian intervention could work in the future. In each of the five successful cases, the intervention was decided upon by the political authorities of a particular state the United States (even if it operated within the framework of NATO), Britain, or Australia and carried out by that state's professional military forces.

These forces had expeditionary capabilities, and there was unity of command with respect to decision-making and decision-execution that is, at both the political and the military levels. The interventions could therefore be undertaken decisively and quickly, and executed with focus, persistence, and effectiveness.<sup>46</sup> This contrasts, for example, with the feckless UN intervention in Bosnia, where there was no unified political authority for its modern military forces, and the ineffective West African interventions in Liberia and Sierra Leone, where there was some unity of decision-making around the Nigerian government, but the intervening nations lacked modern military forces. Of course, even when the decision-making is unified and the military forces

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<sup>45</sup> Graditzky, T. (1998), "International criminal responsibility for violations of international humanitarian law committed in non-international armed conflicts", Vol. 322

<sup>46</sup> Egeland, J. (1999), "Peace-making and the prevention of violence: the role of governments and non-governmental organizations", Vol. 81 No.833, pp.73-8.

highly professional, the intervention will fail if political decision-makers are feckless, as was the case with the Clinton administration in Somalia.<sup>47</sup>

## 2.6: Emerging Norm of Humanitarian Intervention

The international relations scholars surveyed are not in agreement as to whether there is a norm of humanitarian intervention resulting from Security Council practice, let alone a norm with respect to unauthorized humanitarian intervention. For example, none of the post-Cold War Security Council-authorized interventions can be viewed as model examples of humanitarian intervention. In addition they argue that states have been reluctant to participate in what is coming to be seen as a generalized erosion of the principle of non-intervention. This reluctance has forced the Security Council to underline the "unique and exceptional circumstances" of each forcible intervention.<sup>48</sup>

Further, they maintain that any shift in the international community with respect to humanitarian intervention is confined to Western liberal democratic states. Many non-Western states question the West's (and especially US) motives in advocating humanitarian intervention, seeing it as a new form of 'imperialism' which will leave the weak vulnerable to the cultural preferences of the strong. Hence they may oppose legitimizing humanitarian intervention for fear of setting precedents which might be employed against them in the future.<sup>49</sup> Michael, on the other hand, argues that the Security Council resolutions on the conflict in the former Yugoslavia demonstrate

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<sup>47</sup> Eide, A., Rosas, A., Meron, T. (1995), "Combating lawlessness in gray zone conflicts through minimum humanitarian standards", *American Journal of International Law*, No.89, pp.215.

<sup>48</sup> Mohammed Ayoob, (2002), 'Humanitarian Intervention and State Sovereignty', *International Journal of Human Rights*, 6, 1 pp. 94-5.

<sup>49</sup> Ibid

a "significant shift in the attitude of the Council in favor of recognizing universal human rights and granting them greater weight in promoting and protecting international peace and security." He adds, however, that "this is an incremental rather than fundamental transformation," which "remains hamstrung by the absence of consensus on the relationship of human rights to international peace and security, demonstrated by the Council's preference for the existence of agreements between the parties before consistently making such a connection."<sup>50</sup>

This observation is supported by Mary who notes that the Security Council has not yet developed a general doctrine of humanitarian intervention but proceeds as is required on a case-by-case basis. Because of this, Smith argues, "the normative scene is still cloudy, and the extent to which we have moved beyond traditional norms is dubious." However, Richard acknowledges a fundamental but subtle change in political attitudes towards the concepts of sovereignty and domestic jurisdiction. He notes that: The concept of domestic jurisdiction has changed in substance, if not in law. The two dominant norms of world politics during the Cold War namely, that borders were sacrosanct and that secession was unthinkable no longer generate the almost universal enthusiasm and acceptance that they once did. The automatic and almost reverential respect for nonintervention in the internal affairs of states has made way for a more subtle interpretation according to which, on occasion, the rights of individuals take precedence over the

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<sup>50</sup> Michael J. Smith (1998) 'Humanitarian Intervention: An Overview of the Ethical Issues', *Ethics and International Affairs*, 12 (1998), p. 78.

<sup>51</sup> Mary Kaldor, 'A Decade of Humanitarian Intervention: The Role of Global Civil Society', in Helmut Anheier, Marlies Glasius and Mary Kaldor (eds.), *Global Civil Society 2001* (Oxford, Oxford University Press)

rights of repressive governments and the sovereign states they represent.<sup>52</sup> Mariano too finds that "there is a growing discrepancy between the norms of sovereignty and the traditional legal organization of the international system on one hand, and the realities of a world in which the distinction between domestic politics and international politics is crumbling."<sup>53</sup> These authors seem to be suggesting that changing attitudes towards sovereignty may signal a more widespread acceptance of the doctrine of humanitarian intervention.

There appears to be general agreement among many of the international relations scholars surveyed who view humanitarian intervention as a legitimate course of action that interventions ought to be authorized and implemented collectively by the international community. As Hoffman (1996) argues, "the old Cold War presumption against unilateral intervention ought to stand." There remains, however, ambivalence as to whether a regional organization is a sufficiently broad and representative collectivity. Richard, for his part, suggests that many states, particularly European, are "rethinking historical prohibitions against humanitarian intervention in the wake of NATO's actions over Kosovo."<sup>54</sup> For Mariano, the 1991 unauthorized intervention in Iraq led by the United States and the United Kingdom, the ECOWAS intervention in Liberia, along with the NATO intervention in Kosovo are part of a larger trend that has seen states give increased weight to human rights and humanitarian norms as matters of international concern to

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<sup>52</sup> Richard Falk, 'The Complexities of Humanitarian Intervention', chapter 4 in his *Law in an Emerging Global Village* (Ardsley, NY, Transnational Publishers, 1998), stresses the need to make intentions consistent with implementation.

<sup>53</sup> Mariano Aguirre, (2001) 'The Media and Humanitarian Spectacle', in Humanitarian Studies Unit (ed.), *Reflections on Humanitarian Action. Principles, Ethics and Contradictions* (London, Pluto Press)

<sup>54</sup> Richard Falk, 'The Complexities of Humanitarian Intervention', chapter 4 in his *Law in an Emerging Global Village* (Ardsley, NY, Transnational Publishers, 1998), stresses the need to make intentions consistent with implementation.

the extent that the Security Council may now choose to characterize these concerns as threats to international peace liable to enforcement measures under Chapter VII of the UN Charter.<sup>55</sup> Indeed, in the space of less than five years from 1992, the Security Council authorized interventions of a humanitarian nature in Somalia, Bosnia, Rwanda, Haiti, and Albania. Since many of these interventions were launched only after a crisis had assumed catastrophic proportions and were therefore criticized by critics to be "too little, too late," states have come under considerable pressure to take more effective measures in advance of humanitarian disasters as NATO arguably did in the case of Kosovo.

In addition, Mariano notes that the international community has taken many significant steps to give international humanitarian law greater substance, and that alongside these developments and the broad shift in international concerns, NATO's enforcement actions in Kosovo, although unauthorized, begin to look somewhat less irregular. Still the challenge remains no less urgent for states to find a way to reconcile effectiveness in defence of human rights and humanitarian law with legitimacy of process.<sup>56</sup> In sum, the international relations literature reveals that there has been normative movement on the issue of humanitarian intervention since the end of the Cold War; however, there remains a lack of consensus regarding the legitimacy of and appropriate circumstances under which both UN-authorized and unauthorized humanitarian interventions may take place.

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<sup>55</sup> Mariano Aguirre, (2001) 'The Media and Humanitarian Spectacle', in Humanitarian Studies Unit (ed.), *Reflections on Humanitarian Action. Principles, Ethics and Contradictions* (London, Pluto Press)

<sup>56</sup> Ibid

## 2.7: Benefits of Humanitarian Intervention

The fundamental objective of humanitarian action is to alleviate suffering and save lives. Humanitarian action focuses on people and is rights based.

### 2.7.1: Delivering aid

The trend of identified humanitarian needs outstripping available resources continues, against a backdrop of a global economic downturn. In 2011, the United Nations launched its biggest consolidated funding appeal ever (€5.7 billion) for humanitarian needs. The impact of the triple disaster caused by the 9.0 magnitude earthquake in Japan; of the internal conflict in Libya, and of the famine provoked by the drought and complicated by conflict in the Horn of Africa, which alone is affecting more than 14 million people, coming on top of many protracted humanitarian crises has stretched the international humanitarian community to its limits.<sup>57</sup>

The mismatch between global humanitarian needs and the resources available, together with chronic vulnerability in many parts of the world, continues to have a direct bearing on the lives of millions of people in need of assistance. It also means that donors have to re-double their efforts to respond to disasters in a more efficient and effective manner. In this context, there is a growing understanding within the international humanitarian community on the need to put further effort and emphasis on preparedness and on resilience, as well as to fine-tune and offer the appropriate assurances on the quality and efficiency of the humanitarian response. In order to improve coordination, it is crucial to improve cooperation with a wide-range of 'non-traditional' donors in response to crises within the multi-lateral framework. Linking relief, rehabilitation and development (LRRD) should be further emphasized in 2012.

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<sup>57</sup> ICRC (1999a), *ICRC Annual Report 1999*, ICRC, Geneva

The continued impact on lives and livelihoods in the aftermath of major crises such the 2010 earthquake in Haiti and the Pakistan floods are illustrations of how crucial it is to adequately address longer-term rehabilitation and development needs even at the earliest stages of a humanitarian response.<sup>58</sup>

### 2.7.2: Peace-making, peace-keeping and peace-building

Comprehensive definitions to UN peace operations became necessary after UNSC obtained flexibility for action after one of the great adversary's (i.e. the USSR) disappearance. The definitions were requested by UNSC and later on best presented by former Secretary-General Boutros Boutros-Ghali in his well-known report —*An Agenda for Peace*. By recognizing the end of Cold War, Secretary-General gave rather a general framework for UN and described what must be the features of preventive diplomacy, peacemaking, peace-keeping and peace-building in the new era. In the report, he drew special attention to human rights issue, presenting the cornerstone of conflict resolution in the requirement for commitment to human rights with a special sensitivity to those of minorities; whether ethnic, religious, social or linguistic arguing that —the time of absolute and exclusive sovereignty ... has passed.

Others are more accurate, saying "in the contemporary world the legitimacy of sacred authority, whether religious or secular, has become problematic. To understand Boutros-Ghali's views on the issue, the definitions given in the report should be reviewed carefully.

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<sup>58</sup> Dugard, J. (1998), "Bridging the gap between human rights and humanitarian law: the punishment of offenders", *IRRC*, Vol. 324 No. September, pp.445-53.



First of all, he defines peacemaking as an action to bring hostile parties to agreement, essentially through peaceful means, based on Article 33(1), which sets forth all the available means of peaceful settlement. In other words, as truce is being maintained while conflict in general is still there, diplomatic efforts should contribute to lasting resolution. Another UN Report argues that peacemakers do not necessarily need to be armed, i.e. such negotiators as envoys, non-governmental groups or regional organizations can also play on that ground. Perhaps a best example could be the French President Nicolas Sarkozy's efforts in times of August War as a matter of —shuttle diplomacy between Russia and Georgia.

It leads to the mobilisation of peace efforts, provides greater opportunities for harmonising policies and actions, and facilitates information sharing, consultations and decision-making. Particularly, it allows the incorporation of humanitarian concerns in peace making and peace-keeping arrangements. The return of refugees was an integral part of the Paris Accord on Cambodia as well as the Dayton Peace Agreement on Bosnia and Herzegovina. Many peace-keeping missions - UNTAC, UNIMUZ and UNAMIR -included provisions for humanitarian assistance and protection of civilians in their mission.

To build the momentum for peace, it is essential that a framework guiding political and humanitarian action is established early on. During the war in Bosnia and Herzegovina this quite simply did not happen before 1995 - hence we had the UN deployed when there was war and NATO when there was peace. It leads to the mobilisation of peace efforts, provides greater opportunities for harmonising policies and actions, and facilitates information sharing, consultations and decision-making. Particularly, it allows the incorporation of humanitarian concerns in peace making and peace-keeping arrangements.

The return of refugees was an integral part of the Paris Accord on Cambodia as well as the Dayton Peace Agreement on Bosnia and Herzegovina. Many peace-keeping missions - UNTAC, UNIMoz and UNAMIR - included provisions for humanitarian assistance and protection of civilians in their mission. To build the momentum for peace, it is essential that a framework guiding political and humanitarian action is established early on. During the war in Bosnia and Herzegovina this quite simply did not happen before 1995 - hence we had the UN deployed when there was war and NATO when there was peace.

With this in mind, by and large, the international law developed only 3 distinct forms of interventions under clear mandate of UN, with the purpose of restoring stability in the target area state or region: peace-making, peace-keeping and peace-building while peace enforcement standing alone in the corner as a direct and often brutal use of force under Article 42 of the Charter, even though they are not present in any form in any convention, treaty or other multilateral agreements. They constitute a certain kind of conceptual triangle "peace triangle", which shows the means and ways to enforce or achieve peace and stability in war-torn societies, save a failing state and fragile statehood, stop ethnic cleansings, etc. under the provisions of UN Charter. All 4 terms represent sets of tools to achieve the generally narrow understanding on the —absence of war and beyond, accompanied by the cooperation among all international actors and are based on freedom, independence, respect for human rights and equality. If the principles of UN-led traditional peace operations were consent, impartiality, and minimum use of force (the "holy trinity"), the modern patterns are more multidimensional and the mandates are often well-beyond the known definitions, now labeled as "wider [robust] peacekeeping". One can observe certain type of inertia or even neglect here, but it is more like a result of absence of any comprehensive doctrine on the matter.

### 2.7.3: Promoting Justice

Conflict will never be eliminated, and it is often constructive, but it can also be very destructive if issues of fairness and justice are not dealt with effectively. Regardless of the outcome of conflict, there are emotional costs. Win or lose, these emotional effects remain and can linger long after conflict has been officially resolved analogous to plaque that builds up in arteries and later results in a heart attack. The parties involved can be trapped in their anger over a promotion lost, continue to gloat over beating a competitor, or constantly berate themselves over a missed opportunity. These emotional after-effects can be diminished if proper attention is paid to what has been called “organizational justice”.

Organizational justice has taken many forms over the years, but has developed a taxonomy that has proven empirically sound and highly useful.<sup>59</sup> Part of Greenberg's taxonomy categorizes organizational justice into “structural justice” and “social justice”. Structural justice means that employees are involved in the decision-making process and the employer provides a fair distribution of outcomes.

Social justice, by contrast, means that employees perceive the organization as openly sharing information with them, and they believe that the employer cares about their well-being. Some readers may be familiar with the distinction between procedural and distributive justice. The structural and social justice distinction not only incorporates distributive and procedural justice but also adds an important element of interpersonal interaction – how people are treated on an

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<sup>59</sup> Axworthy, L. (2000), “The mouse is mightier than the sword”, in Hick, S., Halpin, E.F., Hoskins, E. (Eds), *Human Rights and the Internet*, Macmillan, London,

interpersonal level when an organization institutes its policies and procedures. Attention to structural justice has traditionally been viewed as vital to maintaining harmony and avoiding conflict within an organization. Recent studies suggest that perceived social justice, with its emphasis on the interpersonal dimension, is especially important in the minds of those asked to contribute to the organization.<sup>60</sup>

One of the principal functions of the UN's multi-dimensional peacekeeping operations is to help build the foundations of a functioning state in countries emerging from protracted internal conflict. As noted above, in some instances state capacity may be so weak that the mission is required to assume certain state functions, either directly or in support of the State, on a temporary basis. Other situations may require a less intrusive form of intervention. The posture adopted by a particular operation will ultimately depend on the gravity of the situation on the ground, the level of resources the international community is willing to invest and the degree of intervention national counterparts are willing to tolerate. Each of these variables is likely to change throughout the course of an operation's lifetime.

### **2.7.3: State-Building**

Although UN peacekeeping operations have taken on important state-building functions these functions must be carried out with the aim of restoring the capacity of the country concerned to exercise its full sovereignty, with due respect for international standards. The promotion of

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<sup>60</sup> Goertz, Gary & Diehl, Paul F., „Towards a Theory of International Norms: Some Conceptual and Measurement Issues“, *Journal of Conflict Resolution*, Vol.36, No.4 (1992), pp.634-664

national ownership does not mean therefore that a peacekeeping operation should be captive to the will of a government whose decisions and actions violate the terms of the peace agreement it has signed-up to or the universally accepted norms and standards that a UN peacekeeping operation is bound to uphold.

## **2.8 Concussion**

All personnel should be aware of the potential for their presence to undermine national authority and responsibility. National capacities should be encouraged and developed throughout the life of the mission. Any displacement of national capacity should be highly circumscribed and always serve the objective of restoring national ownership as quickly as possible. Despite the pressure to produce results quickly, an effort should be made to involve national stakeholders, as far as possible, in the planning and execution of the mission's core programmes and activities and help them develop the capacity to take these forward when the mission eventually withdraws.

## CHAPTER THREE

# NORMS REGARDING HUMANITARIAN INTERVENTIONS IN THE EAST AFRICAN REGION 1994-2011: A CRITICAL ANALYSIS

### 3.0: Introduction

The previous chapter dealt with the historical development of humanitarian interventions in different part of the world at different time. Furthermore the chapter has covered the Liberal critical theory its counterpart the realism theory and how their relevance and application to humanitarian interventions.

This chapter has presented, analyzed and interpreted the data that the researcher got from the respondents as well as from the secondary sources. The chapter also has detailed covered the factors that influences the norms in Somalia and Darfur.

This research is based on a Pluralist perspective of International Relations, thus it would be a fallacy to assume that interest-driven state behavior is a proper explanation of the selectivity of humanitarian intervention. Only the Realist school of IR looks to states as essentially rivals, interest-driven entities. But this is not the way interest is being tackled here. Though the selectivity of humanitarian intervention is still being argued for here to be based on interest selection, state interest is looked at from a Pluralist perspective not a Realist, Hobbesian one. In that sense, state interest is used in this regard to refer to collective interests of the different groups constituting the state which eventually shape what is perceived to be the national interest of this state. Therefore, groups in the society shape their interests through perceptions of what they think is in their best interest and consequently the government gets influenced and adopts

these collective interests as their own. The racist state practice is a complicated matter. Some modern anthropologists reject the term. Race all together arguing that it is socially constructed and that there is no such a thing as pure race. In the discussion here, race is used with its socially constructed meaning not its anthropological dimension.

### **3.1: Effectiveness of UN Charter on humanitarian intervention in the Region**

The UN Charter governs the legal use of force between or among nations. Its primary purpose is to maintain international peace and security.<sup>61</sup> It functions in several ways, but four provisions are especially relevant to the topic of armed humanitarian intervention. First, the charter prohibits nations from using or threatening to use force in their international relations with each other. Second, it demands respect for the political sovereignty of every nation.

Third, the charter emphasizes that all nations are equal; that the sovereignty of each is entitled to the same respect. Fourth, the charter created the United Nations Security Council (UNSC) and vested it with the sole authority to identify and contend with "threat[s] to the peace." The UNSC's authority includes a monopoly on the use or threat of use of coercive force. (The term "coercive force" means any use of force not undertaken in individual or collective self-defense as authorized by Article 51 of the charter.)<sup>62</sup> The purpose of the use or threat of the use of coercive force is to change the conduct of the nation against which the force is threatened or used. A simple example is the use of force to expel Iraq from Kuwait in 1991 after Iraq invaded Kuwait

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<sup>61</sup> Roberts, A. (1999), "Humanitarian Issues in International politics in the 1990s", *International Review of the Red Cross*, No.42,

<sup>62</sup> Ibid

and refused to leave on its own. Because the UN Charter is an international agreement, it has the status of international law. The U.S. has ratified the charter without reservation. Under international law, the U.S. must follow all provisions of the charter in good faith. The international legal term for this obligation is *pacta sunt servanda* [Latin for "pacts must be respected"], which the Vienna Convention on the Law of Treaties defines as "the responsibility of all parties to an international agreement to follow its terms in good faith." Although the U.S. has not ratified this convention, it has recognized it as accurately reflecting international law.<sup>63</sup>

As a properly ratified treaty, the UN Charter has the status of "supreme law of the land" under the U.S. Constitution.<sup>64</sup> However, as is often the case in law, that statement does not present a complete picture of its actual domestic legal status. Beyond the Senate's advice and consent and some matters related to participation in the UN, Congress has not acted to domestically implement the essential legal requirements of the charter, including those regulating the use of force. This failure to act within the norms means that the charter's provisions have not been made a part of domestic law that must be followed under threat of criminal sanction.

Regardless, many human right bodies and civilian officers swear to support and defend the Constitution, and that includes the injunction to respect treaties. Doctrines U.S. courts developed over the years view the UN Charter as creating rights and duties between nations, not between or

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<sup>63</sup> J.L. Holzgrefe and Robert O. Keohane (2003) (eds), *Humanitarian Intervention. Ethical, Legal, and Political Dilemmas* (Cambridge, Cambridge University Press, 2003)

<sup>64</sup> Meron, T. (2000a), "The Martens Clause, principles of humanity, and dictates of public conscience", *American Journal of International Law*, Vol. 94 No.1, pp.78-89



among their citizens.<sup>65</sup> Therefore, with one possible exception, our elected political leaders are solely responsible for determining the meaning of the charter and other relevant international laws and the extent to which our nation will adhere to them. Article 51 of the UN Charter, a nation may only use force as part of its "inherent right of individual or collective self-defense". Article 2, paragraph 4 of the charter prohibits nations from using or threatening to use force against the "territorial integrity or political sovereignty" of other nations. Because of these limitations, nations often assert self-defense as a legal pretext for using force even when such a justification does not clearly apply to the circumstances of the violence. Such occurrences include circumstances that might qualify as grounds for an armed humanitarian intervention.

Recently there has been discussion of the concept of preemptive self-defense. Some scholars use the term interchangeably with anticipatory self-defense. However, preemptive self-defense is best understood as the use of force to attack a gathering--but not yet imminent--threat. Arguments often advanced in support of preemptive self-defense state that the gravity or nature of the threat is such that a nation cannot wait for it to develop further before defending itself, because the failure to act immediately would forfeit the practical ability to defend effectively against it.<sup>66</sup> The problem with this concept is that determining when a preemptive attack is appropriate or necessary is entirely subjective and open to abuse. Further, if interdicting imminent threats is potentially problematic under the charter, engaging gathering threats is even

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<sup>65</sup> Toman, J. (1996), *The Protection of Cultural Property in the Event of Armed Conflict Commentary on the Hague Convention of 14 May 1954*, UNESCO Publishing, Dartmouth/Paris,

<sup>66</sup> Ibid

more so. A nation's right of self-defense in these circumstances is, under the charter, a legally complicated matter. Perhaps the best way for U.S. military officers to understand the self-defense concepts debated under the charter is to relate them to the concepts of hostile act and hostile intent that underlie ROE. Under U.S. ROE, when a hostile act is clearly initiated, Soldiers may use force immediately in self-defense. Likewise, when hostile intent is clear even before a hostile act is initiated, the rules of engagement authorize the use of force. In each case, though, the ROE counsel using the minimum force necessary to counter the threat. They permit escalating the use of force if doing so is appropriate under the circumstances. Factors to use to determine what force is appropriate include the nature and imminence of the threat. If the threat is less imminent, the indications of hostile intent and the nature of the threat become more important in determining what force is appropriate.

Determining whether a threat exists and deciding the appropriate response to it are difficult for individuals in battlefield environments. These decisions are even harder for nations in the ambiguous world of international affairs. Nations must examine overt and covert diplomatic and military activities objectively to determine if force or some measure short of it is necessary or justified. For example, should the U.S. or Israel take its cues as to Iran's intent from the statements of its president or from the actions of its supreme leader? Should Iran view two U.S. carrier groups entering the Persian Gulf as an imminent attack against its nuclear enrichment facilities or as a defensive force meant to protect friendly forces in the area? Perceptions will likely vary during these and other uncertain circumstances.

The debate is ongoing, and to date, there has not been international acceptance of the propriety of using force under the charter against either gathering or imminent threats. Preemptive self-

defense is a potentially dangerous tool, and its status is even more doubtful under the charter than anticipatory self-defense. A nation can claim self-defense to justify armed humanitarian intervention only if the attacking nation has directed violence against another nation or nations. The internal violence of one nation threatening to spread itself to another does not constitute an armed attack justifying self-defense. Refugee flows or other conditions that might threaten the internal stability of a neighboring country are also not armed attacks. Under the charter, nations must deal with such threats to peace through the UNSC.

The Security Council's authority to use force. The UN Charter vests the UNSC with the sole authority to identify a "threat to the peace, breach of the peace, or act of aggression." Once the UNSC does so, it has virtually unlimited authority to select peaceful means for dealing with it. After peaceful means have failed or the UNSC has decided they are inappropriate, the charter allows the UNSC to consider using military force. It provides the council the authority to use force (or as happens most often, to authorize its member nations to use force) "to maintain or restore international peace and security."

This authorization raises key questions. Can the UNSC use force to stop serious human rights abuses occurring solely within the sovereign territory of a nation? And if yes, to what extent? To answer we must consider two more principles contained in the charter: the principle against intervention in a nation's internal affairs, and the principle of sovereign equality. The charter contains important provisions that restrict international authority to intervene in the internal affairs of sovereign nations. In addition to prohibiting the use of force "against the territorial integrity or political independence" of another nation, Article 2, paragraph 7 states that "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which

are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter, but this principle shall not prejudice the application of enforcement measures under Chapter VII. The plain meaning of this provision is that the UN should leave nations alone to resolve purely internal problems. However, the exception here is important. The UNSC may use or authorize force to counter threats to international peace and security. This authority is contained in the above-referenced Chapter VII of the charter. Further, given the principle of sovereign equality of nations, it is solely a matter for the UNSC to decide under the charter. Powerful or "more advanced" nations or coalitions have no greater rights than their smaller or weaker neighbor to resolve problems forcibly within the latter's borders.

What constitutes a threat to international peace and security in this context? Mass human rights violations and violence create internal displacements and refugee flows across borders. Refugee flows or internal displacements can be humanitarian crises. Whether they create true threats to international peace and security is a much more difficult question. When substantial cross-border violence breaks out, the case is almost certainly made. Beyond that situation, whether a threat to international peace and security warrants intervention, especially armed intervention, will depend heavily on the circumstances and the perceptions of the UNSC members.

It might be true, as Michael J. Gleason argues that the UNSC violates the charter and undermines its own policy when it authorizes force in circumstances of purely intrastate violence. Given its broad authority over threats to international peace and security, the propriety of UNSC action in a given case will always be debatable. However, recent developments may affect the terms of the debate.

### 3.2: The Responsibility to Protect

In a December 2001 report entitled *The Responsibility to Protect*, the International Commission on Intervention and State Sovereignty (ICISS) formally articulated a concept now referred to as the "responsibility to protect" (R2P). The report responded to repeated pleas by then Secretary-General Kofi Annan to create unity around the fundamental principles of humanitarian intervention. Kofi Annan posed the following question: "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica--to gross and systematic violations of human rights that affect every precept of our common humanity?"<sup>67</sup>

Subsequently, in December 2004, the UN's High-Level Panel's Report on Threats, Challenges, and Change stated that "there is a growing acceptance that while sovereign Governments have the primary responsibility to protect their own citizens from such catastrophes, when they are unable or unwilling to do so that responsibility should be taken up by the wider international community--with its spanning a continuum involving prevention, response to violence, if necessary, and rebuilding."<sup>68</sup>

The General Assembly incorporated R2P in Resolution 60/1, 2005 World Summit Outcome Document. This resolution articulates the responsibility of individual states to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. The document also recognizes a corresponding responsibility of the international community:

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<sup>67</sup> Meron, T. F. (2002), "On the inadequate reach of humanitarian and human rights law and the need for a new instrument", *American Journal of International Law*, No.77, pp.589

<sup>68</sup> Goldstone, R. (1997), "War crimes: a question of will", *The World Today*, Vol. 53 No.4, pp.106-8.

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council ... on a case-by-case basis in accordance with the Charter and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate.<sup>69</sup>

Referring to R2P in Resolution 1674, which it adopted on 28 April 2006 and which addresses the protection of civilians in armed conflict, the UNSC reaffirmed the Outcome Document's provisions "regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity."<sup>70</sup> However, the UNSC did not explicitly endorse a broad authority to intervene in the event of a recognized humanitarian crisis. Nonetheless, R2P purports to recognize the authority and obligation of the international community to intervene if just humanitarian cause exists. It states that "the core tenant of the [responsibility to protect] is that sovereignty entails responsibility. Each state has a responsibility to protect its citizens; if a state is unable or unwilling to carry out that function, the state abrogates its sovereignty, at which point both the right and the responsibility to remedy the situation falls on the international community."

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<sup>69</sup> Zalaquett, J. (1998), "Moral reconstruction in the wake of human rights violations and war crimes", in Moore, J. (Eds), *Hard Choices*, Rowman & Littlefield, Lanham, MD, pp.211-27.

<sup>70</sup> William Ladd, *An Essay on a Congress of Nations for the Adjustment of International Disputes without Resort to Arms*, (1840) (Oxford, Oxford University Press, 1916).

Neither the General Assembly nor the UNSC resolutions have created new international law or amended the UN Charter, but R2P is a significant step in that direction. Still, there are no easy answers. The resolutions only convey the current sense as to what proper practice should be in the future. It remains for us to consider how these competing principles bear on the legality of armed humanitarian intervention.

### **3.3: The Legality of Using Force for Humanitarian Intervention**

Some prominent scholars sensibly take the position that the UN Charter allows for legally justified armed humanitarian intervention only when the UNSC authorizes it. As previously mentioned, at least one scholar believes the UNSC has no power to intervene in the purely internal affairs of a sovereign state no matter how dire the circumstances. Others recognize an emerging state practice--ripening into a new customary legal rule--that individual states or regional organizations may unilaterally intervene if necessary to prevent genocide. It is possible for new rules of law created by the practice of nations to displace treaty obligations. However, this displacement is rare, and it is often difficult to determine whether a practice inconsistent with a treaty obligation is a violation of the treaty or a new, emerging rule of practice.

The ICISS report actually supports this view, which the General Assembly's R2P resolution rejected by reaffirming action through Chapter VII of the charter and the UNSC. The ICISS report suggests that if the UNSC fails to respond to an obvious crisis, the General Assembly should take up the issue in emergency session. It also supports the idea that a regional or sub-regional organization may take action to avert the crisis, so long as it seeks subsequent authorization from the UNSC.

As a practical matter, the UNSC may authorize armed humanitarian intervention when it finds a threat to international peace and security. This option has been its somewhat inconsistent practice in the recent past. The General Assembly's adoption of R2P reinforces this idea, but we do not know whether the world community will fully accept the R2P principle and the legal obligations it imposes. In addition, the permanent, veto-wielding members of the UNSC must also accept and implement R2P and, given the occasional strong objections of Russia and China to intervention in the past, this acceptance is by no means certain. The UNSC resolution, however, appears to welcome R2P.<sup>71</sup>

### 3.4: State Interests and Humanitarian Intervention

Among considerations affecting the decision to intervene, one of the most important might be its chance of success. An armed intervention's perceived and actual legitimacy depends on this chance. A successful intervention must not only stop the immediate suffering, but also prevent it from resuming once forces withdraw.<sup>72</sup> If the intervention is not successful, the force the nation uses to intervene will appear to be, and perhaps in reality will have been, unwarranted. That is, it will have resulted in additional violence that increased rather than prevented the suffering it sought to remedy. Even if the intervention is initially successful, violence may resume after troops leave unless the conditions that led to it are corrected. Even now, eight years after NATO's armed intervention, the world is seeking a permanent resolution to the Kosovo crisis.

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<sup>71</sup> Richard Falk, 'The Complexities of Humanitarian Intervention', chapter 4 in his *Law in an Emerging Global Village* (Ardsley, NY, Transnational Publishers, 1998), stresses the need to make intentions consistent with implementation.

<sup>72</sup> Moore, Jonathan, „Deciding Humanitarian Intervention“, *Social Research*, Vol.74, No.1 (2007),pp.169-200



While the U.S. supports independence or at least largely autonomous self-governance for Kosovo, such a resolution goes against the desires of both Serbia and Russia, with Russia holding a critical veto power in the UNSC. (45) For the entire period of this debate, NATO has had troops on the ground to monitor the situation and maintain the peace.<sup>73</sup> Given the potentially long commitments involved and the danger inherent in armed humanitarian intervention, the political will of the countries providing the intervening forces is an important consideration. To achieve the desired result, countries must remain committed to the armed intervention and any post-conflict operations that events might require, including peacekeeping and other stability and support operations.

A nation's political will depend on many factors. Perhaps the most important of these is the public's perception of whether or not the intervention is in the national interest. A nation's leaders justify placing and keeping its military in harm's way because it is in the national interest to do so. On the other hand, the international community and the population of the nation in which the intervention occurs will view such a pursuit of strategic interests with suspicion--even if the pursuit of these interests relates to the humanitarian crisis itself. While it might be desirable to have a purely humanitarian motive for an armed intervention, there is a genuine question as to whether that is realistic. There was little national interest in U.S. participation with NATO in the Kosovo intervention, whose purpose was primarily to assuage moral outrage and maintain the legitimacy of NATO. This lack of national interest resulted in severe U.S. operational limitations

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<sup>73</sup> Richard Falk, 'The Complexities of Humanitarian Intervention', chapter 4 in his *Law Emerging Global Village* (Ardsley, N.Y, Transnational Publishers, 1998), stresses the need to make intentions consistent with implementation.

when the armed intervention began.<sup>74</sup> In comments on humanitarian intervention, one of the ICISS members recognizes the need for staying power: "For an intervention to be sustained, at least one state with the requisite military capacity must also have a stake in stabilizing the situation, as with Australia in East Timor."<sup>75</sup> What kind of "stake" in stabilizing the situation is proper? Obviously, it must be one that will maintain the public's willingness to expend money from the national coffers and put its military forces at risk.

If the stake in the situation is indefinite, such as "regional stability" outside of one's neighborhood in the international community, there is a risk of not having identified the interest in terms that a citizenry will understand or accept. But at the same time, identifying some tangible stake such as an economic interest may undermine international and local perceptions of the intervention's stated humanitarian motive by causing the operation to lose its appearance of legitimacy.

### **3.5: Humanitarian Intervention Norms**

What are the appropriate ends, ways and means of a humanitarian intervention? Narrow moral and legal justifications for armed humanitarian intervention require that the ends, ways, and means of both military and post-conflict operations clearly relate to the justifications for it. Much of the commentary on both humanitarian intervention and R2P supports this view. While "regime change" might be inevitable in some or even most circumstances, we should not always presume it to be so. The factors that will most influence the selection of ends are the history of the conflict and any peaceful attempts to resolve the crisis before the armed intervention.

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<sup>74</sup> Ibid

<sup>75</sup> Ibid

As always, the choice of legitimate ends will guide the selection of legitimate ways and means. Moral and legal justifications influence such selections. In the Kosovo intervention, significant disagreements developed over the overall concept of the air campaign. Conducting effective military operations, ostensibly against only legitimate targets, produced collateral damage that undermined international and domestic perceptions of legitimacy and hence support. These challenges were not rooted in political timidity about engaging legitimate targets, but resulted from the inherent paradox of using armed force for humanitarian purposes.

What emerges from this examination is that armed humanitarian intervention is particularly bound by the constraints of "necessity" and "proportionality." Consideration of both should underlie all strategic and operational planning and decision-making related to armed humanitarian intervention. "Necessity" requires the armed intervention be necessary to stop or prevent widespread, systematic murder or serious injury, including torture, rape, and other serious assaults. This necessity arises when one has exhausted all peaceful means of resolving the situation. Internal conflict and other social or political conditions, in and of themselves, do not create the legal or moral authority for armed humanitarian intervention.

"Proportionality" requires that the ends of the intervention be only those necessary for achieving the humanitarian purpose. Using armed humanitarian intervention to achieve specific national strategic objectives beyond the prevention of violent atrocities risks the operation's real and apparent legitimacy at the international and local levels. At both the strategic and operational level, the bottom line to armed humanitarian intervention is that the cure cannot be worse than the illness. If, in the course of protecting innocent victims, humanitarian intervention

unnecessarily creates more victims, the legal and moral justifications for the intervention are undermined. Such is the challenge of legitimacy in armed humanitarian intervention.

### **3.6: Principles for Humanitarian Intervention**

The respondents agreed that humanitarian intervention operations should be deployed with the consent of the main parties to the conflict. This requires a commitment by the parties to a political process. Their acceptance of a peacekeeping operation provides the necessary freedom of action, both political and physical, to carry out mandated tasks.

In the absence of such consent, a peacekeeping operation risks becoming a party to the conflict; and being drawn towards enforcement action, and away from its fundamental role of keeping the peace. The fact that the main parties have given their consent to the deployment of peacekeeping operation mission does not necessarily imply or guarantee that there will also be consent at the local level, particularly if the main parties are internally divided or have weak command and control systems. Universality of consent becomes even less probable in volatile settings, characterized by the presence of armed groups not under the control of any of the parties, or by the presence of other spoilers.

The respondents further contended that impartiality is crucial to maintaining the consent and cooperation of the main parties, but should not be confused with neutrality or inactivity. Humanitarian Intervention should be impartial in their dealings with the parties to the conflict, but not neutral in the execution of their mandate. Just as a good referee is impartial, but will penalize infractions, so a humanitarian intervention operation should not condone actions by the parties that violate the undertakings of the peace process or the international norms and principles that a United Nations peacekeeping operation upholds.

Notwithstanding the need to establish and maintain good relations with the parties, a humanitarian intervention operation must scrupulously avoid activities that might compromise its image of impartiality. A mission should not shy away from a rigorous application of the principle of impartiality for fear of misinterpretation or retaliation. Failure to do so may undermine the peacekeeping operation's credibility and legitimacy, and may lead to a withdrawal of consent for its presence by one or more of the parties.

However, they may use force at the tactical level, with the authorization of the Security Council, if acting in self-defense and defense of the mandate. In certain volatile situations, the Security Council has given humanitarian intervention operations "robust" mandates authorizing them to "use all necessary means" to deter forceful attempts to disrupt the political process, protect civilians under imminent threat of physical attack, and/or assist the national authorities in maintaining law and order. Although on the ground they may sometimes appear similar, robust peacekeeping should not be confused with peace enforcement, as envisaged under Chapter VII of the United Nations Charter.

Robust peacekeeping involves the use of force at the tactical level with the authorization of the Security Council and consent of the host nation and/or the main parties to the conflict. By contrast, peace enforcement does not require the consent of the main parties and may involve the use of military force at the strategic or international level, which is normally prohibited for Member States under Article 2(4) of the Charter, unless authorized by the Security Council. A UN peacekeeping operation should only use force as a measure of last resort. It should always be calibrated in a precise, proportional and appropriate manner, within the principle of the minimum force necessary to achieve the desired effect, while sustaining consent for the mission and its

mandate. The use of force by a UN peacekeeping operation always has political implications and can often give rise to unforeseen circumstances. Judgments concerning its use need to be made at the appropriate level within a mission, based on a combination of factors including mission capability; public perceptions; humanitarian impact; force protection; safety and security of personnel; and, most importantly, the effect that such action will have on national and local consent for the mission.

### **3.7: Factors Influencing Humanitarian Intervention Norms in Somalia**

The norms of humanitarian intervention in Somalia have been affected by a number of factors: Firstly, the loss of peacekeepers lives in a humanitarian mission intended to be straightforward and low-risk contributed to a risk- adverse international community when Somalia came on the agenda. This reveals two things about the norm of humanitarian intervention. Firstly, like many norms, its evolution is highly sensitive to world events. Secondly, it highlights the fact that the norm is not only dependent on states acceptance of the principles at issue, but is also contingent on the willingness and ability of states to risk soldiers' lives.

The fear of chaotic Somalia shows that in the case of humanitarian intervention there is a distinct difference between widespread acceptance of the norm and the enactment of the norm. Norm life cycle represents the difference between the cascade of a norm and its internalization, as the consistent application of the norm will not occur until it has been truly internalized and enacting it becomes habit. The fact that many states were unwilling to risk their soldiers' lives in a repeat performance of Somalia, the researcher suggest that, does not tell us a great deal about their acceptance of the norm. Of course, genuine acceptance of the norm of humanitarian intervention involves states awareness that the norm involves the use of military force in the

name of human rights, and therefore an awareness of the inherent risks to soldiers, but in an individual case of potential intervention, states might decide that the risks involved in that particular operation are unacceptably high. Therefore there are (among others) two factors determining whether states support a particular humanitarian intervention: whether they accept the norm or not, and whether they think the risk to their troops' lives is acceptable.

In other words, it is possible for states to accept the norm of humanitarian intervention whilst not accepting the risks to their soldiers' lives in a particular case. There may be a threshold, which would of course be hard to measure, for what would count as acceptable risk, but as Somalia demonstrates such a threshold would likely be very sensitive to the prevailing international mood about the loss of life in combat. This all reminds us that humanitarian intervention is a foreign policy option. Widespread and genuine acceptance of the norm may never eliminate the high level of discussion and debate that always accompanies foreign policy decisions. This raises questions about whether the norm of humanitarian intervention can ever become internalized.

The second the humanitarian intervention norm in Somalia is affected by the realization that intervening in humanitarian disasters is a complex undertaking. Although this might seem an obvious observation, the decision by the US to intervene in Somalia was predicated on the fact that it could be a short, sharp (as well as low-risk) intervention. As things began to go dramatically wrong in Somalia, policymakers realized that advocacy for humanitarian intervention would involve the acceptance of a norm entailing an obligation to become involved in complicated and long-term military operations. This confirms the theory on the clarity of norms.

As the decision to intervene in Somalia was made by Bush, the norm of humanitarian intervention was still very much emergent and vaguely defined, and the US administration was able to interpret it to suit its military agenda; humanitarian intervention could mean the brief deployment of military force to ensure the distribution of humanitarian assistance. What the disastrous outcome of Somalia showed the US and the wider international community was that humanitarian intervention was unlikely to succeed unless it addressed the root causes of severe human rights abuses, and unless states were prepared to endure complex and time-consuming operations. With its first application in the post-Cold War era, the norm was shown to be less straightforward than the US had interpreted it and its application suddenly seemed distinctly less likely, as Rwanda demonstrated<sup>76</sup>.

The third Somalia provoked a return to more traditional interpretations of UN peacekeeping thus affecting the humanitarian intervention. The disaster in Somalia prompted both the UN Secretariat and member states to re-evaluate the conditions of peacekeeping, and their conclusion were unanimously that peacekeeping should be neutral, impartial and based on consent.<sup>77</sup> In the wake of the deaths of peacekeepers in Somalia, the Security Council had been discussing a possible framework for future UN peacekeeping missions, to give the council clearer and more uniform guidelines for when to authorize peacekeeping. In Somalia the norm of humanitarian intervention was no longer competing with the sovereignty norm (as it had been when the decision to intervene in Somalia was made).

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<sup>76</sup> Walter Clark and Jeffrey Herbst, „Somalia and the Future of Humanitarian Intervention“, *Foreign Affairs*, Vol.75 No.2 (1996), pp.70-85

<sup>77</sup> UN Security Council, 3368th Meeting, 21 April 1994



### 3.8: Factors Influencing Humanitarian intervention norms in Darfur

The civil war in the Darfur region of Sudan has been raging since 2003. In April 2008 two UN officials placed the death toll at 300,000,112 but others suggest this number of people had been killed by 2005.<sup>78</sup> Although not characterized by the level of inaction that defined the international response to Rwanda, the increased support for the norm of humanitarian intervention after 1994 has not materialized in the policies adopted by states towards the ethnic cleansing, or genocide (as some have labeled it), in Darfur.

Currently, the UN-AU Mission in Darfur (UNAMID) „is doing all in its power and with limited resources to provide protection to civilians in Darfur, facilitate the humanitarian aid operation, and help provide an environment in which peace can take root.<sup>79</sup> Crucially, however, UNAMID was not agreed to by the Security Council until consent had been elicited from the Sudanese government (a protracted process that caused significant delays): UNAMID is not a humanitarian intervention, although it is authorized to use all means necessary to protect its own personnel and civilians. The international community's emphasis on the need for consent from Sudan and the cautious respect for its sovereignty can be found in almost all official deliberations on peacekeeping in Darfur.

The preambles to all the Security Council resolutions on Darfur include a standard reaffirmation of the council's commitment to the sovereignty, unity independence and territorial integrity of

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<sup>78</sup> House of Commons International Development Committee, Darfur, Sudan: The Responsibility to Protect, fifth report of session 2004–05, vol 1 (HC 67-1), March 30, 2005,

<sup>79</sup> UN Security Council Resolution 1547, 11 June 2004

Sudan.<sup>80</sup> Not only have states like China and Russia expressed the „overriding need for the consent of the government of Sudan, but strong advocates of the norm of humanitarian intervention like the UK have stressed the importance of the consent of the Sudanese government to the deployment of a UN peacekeeping force to Darfur.<sup>81</sup> Even the African Union, which has one of the most explicit provisions for humanitarian intervention of all regional organizations, in Article 4(h) of the Constitutive Act of the AU,<sup>82</sup> refused to act without the consent of the government in Khartoum.

Evidence for this can be found in a communiqué from an AU mini-summit in October 2004, in which members reaffirmed their commitment to Sudan's sovereignty and rejected the possibility of any foreign intervention by any country whatsoever. In its statement following the adoption of Security Council Resolution 1706 authorizing the expansion of the United Nations Mission in Sudan (UNMIS – at the time already operating in southern Sudan) to include peacekeeping activities in Darfur (on condition of Sudan's consent), Ghana was the only state to suggest that Sudan's consent should not be the ultimate concern of the council, and explicitly referred to Article 4(h). In adopting Article 4(h), the AU member states set themselves the highest standards

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<sup>80</sup> Mr Nana Effah-Apenteng of Ghana, UN Security Council 5519th Meeting, 31 August 2006

<sup>81</sup> Constitutive Act of the African Union, Article 4(h) asserts „the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity

<sup>82</sup> Constitutive Act of the African Union, Article 4(h) asserts „the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity

of accountability in governance. But, more importantly, they assumed the responsibility to protect the victims of war on the continent. Clearly, the situation in the Sudan merits some form of international engagement that is timely, meaningful, well-coordinated and effective.<sup>83</sup> Nevertheless, Ghana was alone in highlighting the apparent lack of willingness among other Security Council members to contemplate humanitarian intervention, even in the event of Sudanese refusal to UN peacekeeping in Darfur. What emerges is a picture of an ever-dominant norm of state sovereignty, which seemed to take unconditional precedence over humanitarian concerns in the international response to the crisis in Darfur. The researcher would contend, therefore, that the unanimous acceptance of the humanitarian intervention norm in the World Summit.

The norm of humanitarian intervention was still very much competing with the established norms of sovereignty and non-interference during the Darfur deliberations. This exposes a point not found in the existing literature on norm evolution – that adoption or acceptance of the norm, even in the formal institutional context of the UN, will not always translate into the automatic enactment of the norm. Despite all the international pontificating about sovereignty as responsibility, did the pledged support for the responsibility to protect fail to manifest itself during the Darfur deliberations?

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<sup>83</sup> Williams & Alex J. Bellamy, „The Responsibility to Protect and the Crisis in Darfur“, *Security Dialogue*, Vol.36, No.1 (2005), p.43

Clearly part of the explanation lies in the fact that state sovereignty is one of the most well-established and closely guarded international norms, so humanitarian intervention is competing against a tough opposition in its bid for a place in the current international normative framework. However, the respondents argued that the rhetorical shift from humanitarian intervention to a responsibility to protect also played a role. Despite apparently encouraging an improved consensus on the norm of humanitarian intervention, respondents argued that the responsibility to protect, in its emphasis on the primary responsibility of states to protect their own citizens, gave states an excuse for inaction. The sovereignty of Sudan came high up in discussions because the responsibility to protect advocates an approach which uses state sovereignty as a starting point, perhaps one of the reasons why such an approach found more approval than traditional notions of humanitarian intervention had.

However, by reinforcing the fact that Sudan holds the primary responsibility for the welfare of its citizens, the responsibility to protect doctrine in fact lent normative weight to arguments against intervention. For instance, the UK, despite being a key norm advocate, tried to justify its rejection of the possibility of forceful intervention with reference to the ICISS responsibility to protect framework: the best way to deliver security to the people of Darfur is to get those with primary responsibility for it to do it...the government of Sudan.<sup>84</sup> It was not only states who endorsed the view that Sudan held the primary responsibility to halt the atrocities in Darfur:

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<sup>84</sup> Francis Deng cited in Alex J. Bellamy, „Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq“, *Ethics & International Affairs*, Vol. 9, No.2 (2005), p.45

high-profile UN special representatives in Sudan, Jan Pronk and Francis Deng also voiced their support for this view. Paradoxically, the respondents argued they argued that although the government “probably” lacked the will and capacity to disarm the Janjaweed, it retained the primary responsibility for doing so they concluded that international intervention would “complicate and aggravate” the crisis by increasing the level of violence and causing the government to withdraw its cooperation.<sup>85</sup>

However, as respondents view suggests, there was considerable evidence that Sudan was not showing the willingness or ability to protect its own citizens, the point referred to in the ICISS report at which the international community should assume the responsibility to protect. meaning any calls for humanitarian intervention would have been legitimate. Indeed, there was considerable evidence publicly available indicating Khartoum’s complicity in the mass atrocities being committed in Darfur. This suggests that arguments stating that the responsibility to protect rested primarily with the Sudanese government were in fact used to legitimate a decision against humanitarian intervention that was made for other reasons.

In looking at alternative explanations for the international community’s reluctance to embrace the possibility of humanitarian intervention, it is hard to avoid the conclusion that the immediate historical context – both within Sudan and internationally – was a factor in the failure of the norm. Firstly, the principles underlying the norm, namely the protection of fundamental human rights, may not always be best served by the norm.

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<sup>85</sup> Bellamy, „Responsibility to Protect“, p.46

Although not quite the same as in the Rwanda case, where most states were unwilling to contribute troops, military overstretch as a result of large-scale operations in both Iraq and Afghanistan may have eliminated any ideas of Western intervention in Darfur before they got off the ground. Thomas Weiss argues that despite the fact that US power is such that it could serve as a significant advocate of the norm, we may be facing the „sunset of humanitarian intervention because its inclination to commit significant political and military resources has waned“ in the wake of Iraq and the war on terror.<sup>86</sup> Whether or not we are truly confronted by the sunset of humanitarian intervention – although I would suggest that the future progress of the norm is not necessarily irrevocably damaged by the present international environment – in the case of Darfur there was no question that the US, UK or NATO would be leading intervention or even troop contributions to a UN force. This genuine lack of capability has manifested itself in the poor material and logistical support for first AMIS and then UNAMID.

### 3.9 Conclusion

Even if the norm enjoyed unbridled success and was universally (and genuinely) accepted, it would not necessarily be appropriate to use it to stop every case of mass human rights violations. Humanitarian intervention comes at the extreme end of a continuum of peacekeeping and conflict resolution policies, and as such will not always be resorted to, regardless of the stage of evolution the norm has reached. Secondly, the fact that exercising the norm in Darfur was constrained by the North/South peace process supports.<sup>87</sup>

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<sup>86</sup> *ibid.*

<sup>87</sup> Florini, „The Evolution of International Norms“, p.377

Other than creating an environment inhospitable to the enactment of the humanitarian intervention norm in Darfur, the war on terror, and particularly the war in Iraq, had another effect on the norm. The use of humanitarian justifications for the war in Iraq, which many argued were only invoked when other reasons were found to be based on poor factual information, damaged both the legitimacy of the norm and of those states engaged in Iraq that advocated it. It led states to suspect that Western advocacy of the humanitarian intervention norm „masked neo-imperial ambitions.<sup>88</sup> Indeed, Sudan itself expressed its concern about Western motives when it asked whether the Security Council's „lofty humanitarian objective“ in Darfur was a „Trojan horse...embraced by other people who are advocating a different agenda.<sup>89</sup> Moreover, Cheryl Igiri and Princeton Lyman note that Sudan lobbied Arab and African governments, warning them that pressure from the US on the issue of Darfur was part of an attack on Islam.<sup>90</sup> Other motives for Western concern about Darfur were speculated about in the press in various Arab countries, motives including the US wanting to increase leverage on Egypt, the desired overthrow of Sudan's Islamic government, keeping Sudan dependent on American food aid and the US aim to gain access to Sudan's oil reserves.

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<sup>88</sup> Williams & Bellamy, „The Responsibility to Protect and the Crisis in Darfur“, p.36

<sup>89</sup> *ibid.*

<sup>90</sup> Cheryl O. Igiri & Princeton M. Lyman, „Giving Meaning to “Never Again”: Seeking an Effective Response to the Crisis in Darfur and Beyond“, Council on Foreign Relations, CSR No.5 (2004), pp.21-22

## CHAPTER FOUR

### EMERGING ISSUES

#### 4.0: Introduction

The previous presented, analyzed and interpreted the data that the researcher got from the respondents as well as from the secondary sources. The chapter also has detailed covered the factors that influences the norms in Somalia and Darfur.

This chapter critically examines humanitarian intervention. It also examines the gap in the emerging issues. Humanitarian intervention's malfunction is often attributed to state selectivity, but in addition, the inadequacy of the humanitarian discourse itself could account for it as well. Humanitarianism is an ancient discourse that takes the individual as its focal point.

This discourse has influenced disciplines such as IR and International Law among others creating subdivisions for instance Liberal Theory as one of the main schools of IR, Human Security as one of the divisions of Security Studies and Humanitarian International Law as one of the categories under International Law. Not only in academia, but it has had an impact on activism creating a tremendous Human Rights Regime that has been developed through various multilateral treaties starting with The Universal Declaration of Human Rights. Though IR has been mostly state-centered till the end of the Cold War, the humanitarian discourse was growing timidly during that time. With the end of the war, attention started to be drawn to wider definitions of security law and development. As an example, human security is one of the disciplines that have grown rapidly during the past two decades introducing a more comprehensive understanding of human rights and human protection. But human security, as



other disciplines influenced by humanitarian discourse, showed lack of clear definition of what they aim for and/or how to implement it.

#### 4.1: Emerging issues

A nation's political will to intervene depend on many factors. Perhaps the most important of these is the public's perception of whether or not the intervention is in the national interest. A nation's leaders justify placing and keeping its military in harm's way because it is in the national interest to do so. On the other hand, the international community and the population of the nation in which the intervention occurs will view such a pursuit of strategic interests with suspicion--even if the pursuit of these interests relates to the humanitarian crisis itself. Identifying some tangible stake such as an economic interest may undermine international and local perceptions of the intervention's stated humanitarian motive by causing the operation to lose its appearance of legitimacy.

The study established that humanitarian intervention is as result of geostrategic or economic interest. They characterize state interests and thus influence humanitarian intervention. The humanitarian norms are social constructs, been advocated for and contested by various actors in international society. Thus the study approved the null hypothesis that the actors in the humanitarian intervention process are serving the interest of their own state actors or sub-state actors through which political gains are scored and are more likely to undermine peace efforts.

Humanitarian intervention should be treated as an exception, reserved for rare cases, and thus outside the ordinary rules and conventions of international law. However, abuses of human rights- even extreme abuses- are depressingly common, so common in some countries as "to

seem almost like facts of nature"<sup>91</sup> - so even on the most restrictive basis, there are likely to be many possible cases where humanitarian intervention potentially could be justified. Clearly, then, it is not enough to avoid the issue by regarding humanitarian intervention as somehow outside ordinary custom and calculation. Some criteria for judging intervention need to be found. Some situation makes humanitarian intervention appear wrong since it negates the right to self-determination, which he defined as the right of a people "to become free by their own efforts. More so the issue of sovereignty is highly contested with the current legal framework and pillar of UN system. Basing on the study results the study has approved the null hypothesis that there is dearth of proper legal framework and pillar of the UN system to adhere to during humanitarian interventions.

The study explored the current humanitarian condition in Eastern Africa, by looking at the situation in Somalia and in Darfur. The study established that the humanitarian intervention in the two states has been biased and influenced by individual interest; there is lack of proper legal framework concerning and their interference with sovereignty. Thus based on the research result the researcher approves the null hypothesis that the norms regarding humanitarian interventions in the East African region are new issues of concerns which need to be addressed through concrete policies as well as practical initiatives.

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<sup>91</sup> Zartman, I.W. (1995), (Eds), *Collapsed States, The Disintegration and Restoration of Legitimate Authority*, Lyn Rienner, Boulder, CO, pp.301.

## 4.2: Criticism of Humanitarian Intervention

Among the key problems of humanitarian intervention in international law and international relations are interference with sovereignty, use of unwarranted force, weak jurisdiction of humanitarian intervention and the question of selectivity in intervention.

### 4.2.1: Sovereignty

Realist critics argue that allowing the right of humanitarian intervention erodes the fundamental principle of non-intervention, which, they argue, “has not served badly as an ordering principle of international relations.”<sup>92</sup> Although adhering to non-intervention means that at times serious abuses of human rights must be left unpunished, the principle at least helps to limit the number of wars and ensures respect for different societies. Rieff writes that “the basic compact of coexistence between states, expressed in the exchange of recognition of sovereign jurisdictions, implies a conspiracy of silence entered into by governments about the rights and duties of their respective citizens”- therefore ideas of universal human rights are subversive of this compact if any attempt is made to enforce them.<sup>93</sup> From this point of view, realism- which is often caricatured as the doctrine of war, amorally justifying the use of state power- becomes instead the doctrine of peace, seeking to limit the legitimate use of military force to cases of self-defense. Liberals popularly regarded as seekers of peace, instead stand accused of eroding legal and doctrinal safeguards against the use of force, and thereby making war more likely.

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<sup>92</sup> Terry, Fiona. *The Paradox of Humanitarian Action - Condemned to Repeat?* Ithaca: Cornell University Press, 2002.

<sup>93</sup> Rieff, David. *A Bed for the Night – Humanitarianism in Crisis*. Toronto: Simon & Schuster, 2002.

International theorists argue that “states that massively violate human rights should forfeit their right to be treated as legitimate sovereigns, thereby morally entitling other states to use force to stop the oppression.”<sup>94</sup>

The case for the necessity of humanitarian intervention rests on the moral idea that extreme abuse of human rights creates a right or even, perhaps, a duty of response from the international community, and that, if necessary, states must be prepared to back up their values with military force. In the simplest and most common formation of the argument, one cannot ‘do nothing’ when faced with suffering which it is within one’s power to alleviate.

#### 4.2.2: Unwarranted Force

Chesterman states that that seeking to give states a right of humanitarian intervention addresses the wrong problem because it suggests that states are too reluctant to intervene, when in fact they are only too willing to intervene on all kinds of dubious bases.<sup>95</sup> Lederach puts the core of the ‘realist’ case against humanitarian intervention in succinct fashion when he states that: “pressures eroding the prohibition on the use of force are deplorable... even ‘humanitarian intervention’ can too readily be used as the occasion or pretext for aggression.”<sup>96</sup>

Violations of human rights are indeed all too common, and if it were permissible to remedy them by external use of force, there would be no law to forbid the use of force by almost any state against any other.” From this Henkin concludes that humanitarian intervention “should be

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<sup>94</sup> Mona Fixdal and Dan Smith 1999; *The Rights of War and Peace: Political Thought and International Order from Grotius to Kant* (Oxford, Oxford University Press, ‘Humanitarian Intervention and Just War’,

<sup>95</sup> Chesterman, Edward. “Under What Circumstances Should the UN Intervene Militarily in a ‘Domestic’ Crisis?” In *Peacemaking And Peacekeeping For The New Century*. ed. Olara Otunnu & Michael Doyle. Maryland: Rowman & Littlefield, 1998.

<sup>96</sup> Lederach, Jean, Paul. *Building Peace Sustainable Reconciliation in Divided Societies*. Washington: United States Institute for Peace, 1997.

sharply limited to actions the purpose of which is unambiguous and limited, for example, to release hostages or execute other emergency evacuations.<sup>97</sup> It could be added that when such operations have been conducted- at least when involving citizens of the intervening state, as is usually the case- they have tended to be considered as justified under the right to self-defense granted by the UN Charter, rather than as cases of humanitarian intervention.

Some other liberals criticize humanitarian intervention on pragmatic grounds, arguing that although intervention by force to protect human rights may be an attractive idea to those who wish to salve their consciences, it is unlikely to do much good in the long term. This critique has a long history: in 1854, Bright, speaking of British foreign policy, argued that “the past events of our history have taught us that the intervention of this country in European wars is not only unnecessary, but calamitous....We have left Europe at least as much in chains as before a single effort was made to rescue her from tyranny.”<sup>98</sup> Among contemporary theorists, Booth argues that “the desire to ‘do something’ has to be tempered by the knowledge that not only may it not be possible to ‘solve’ a historic military conflict by a short and dramatic military intervention, but that it may well make matters worse.”<sup>99</sup> Intervention by outsiders cannot by itself address the underlying causes of a conflict; at most it can deal with the immediate symptoms and provide a better environment for longer-term attempts to deal with the causes. Even that cannot be relied upon. By destroying infrastructure and exacerbating divisions between warring groups, military intervention in an internal conflict may only serve to further stoke mutual hatred. This is one reason why, as stated above, some humanitarian intervention theorists make it a condition of a

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<sup>97</sup> Macrae, Joanna. & Leader, Nicholas. “The Politics of Coherence: Humanitarianism and Foreign Policy in the Post-Cold War Era.” In *Journal Humanitaire –enjeux, pratiques et débats* 1.11 (2000).

<sup>98</sup> Etxeberria, Xavier. “The Ethical Framework of Humanitarian Action” in *Reflection on Humanitarian Action*. London: Pluto Press, 2001.

legitimate intervention that there should be no demonization of entire peoples, but only of individuals. However, critics argue that, in the heated atmosphere of war, such conditions are unlikely to be fulfilled. Even if governments are careful, as is usually the case nowadays, to say that their argument is with the leader of the offending state rather than with his people, media commentators often are not so scrupulous.

A related potential danger is that excessive moral certainty may cause states to rush to war in cases where peaceful methods might still have borne fruit. In an article decrying "the new craze for humanitarian intervention", Etxebarria argues that "if a conflict is projected as a struggle against evildoers, then there is not a moment to lose. Delay itself becomes a form of moral appeasement and wickedness."<sup>99</sup> Critics can provide many examples of the sad effects of misplaced moralism in international relations. One of the most compelling would be that of the Versailles Conference, where the Allied powers- led by Woodrow Wilson, a convinced liberal interventionist- decided that Germany bore the moral guilt for causing the First World War and that she should therefore be punished.

Even a seemingly successful intervention may in fact only produce a short-term settlement, while the resentments that it creates may serve to further reduce the prospect of a long-term solution- mutual ethnic hatreds may be inflamed, or the 'liberated' population may become resentful at being left dependent on those who 'saved' them. Moreover, it is argued, interventions promote self-righteousness in the states that conduct them. Once a state has convinced itself that its own foreign policy is impeccably moral, it will no longer be able to see that other states may have decent and defensible reasons for opposing it. Morgenthau warned in

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<sup>99</sup> Ibid

the 1950s of how this attitude had come to infect US foreign policy: "Since American foreign policy is by definition. Indeed, if one accepts Booth's argument that Just Wars legitimize war and promote militarization, the effects may be even more wide-ranging. A humanitarian war which is perceived as having been successful may well encourage states to pursue more such wars- and, perhaps, to resort to force with less reluctance than before. To quote A.J. Muste: "The problem after a war is with the victor. He thinks he has just proved that war and violence pay."<sup>100</sup>

Critics such as Ken Booth and Richard Falk argue that military force can never (or hardly ever) be an appropriate instrument for achieving humanitarian objectives; it is too destructive and unjust in its effects. Even modern precision weapons do not make it possible to fight a 'clean' war; and, however good the intentions of the intentions of the interveners, the one thing that can be said with near-certainty before an intervention begins is that a considerable number of innocent civilians will end up dead.

This might be acceptable if the number of innocent deaths is significantly less than would have occurred without an intervention, distasteful as such counting games are; but such things cannot be known in advance and are often virtually impossible to judge even in retrospect. On top of this, 'humane' critics argue, if an intervention is not immediately successful, the powers involved will likely be forced to turn to harsher and harsher tactics until they end up closely resembling their supposedly evil opponents.

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<sup>100</sup> A.J. Muste. "Upholding Humanitarian Principles in an Effective Integrated Response." In *Journal of Ethics and Humanitarian Affairs* 18.2 (2004).

The ultimate tyranny in war, says Mortimer, is that resistors of aggression are forced to imitate, and perhaps even to exceed, the brutality of the aggressor in order to win. General Sherman made this point with stark simplicity when he said that 'war is hell. If this is so, then the inherent contradiction in the phrase 'humanitarian war' is too deep to be reconciled.<sup>101</sup> And yet despite this, critics argue, the military option is dangerously seductive. It seems to provide a neat and dramatic solution to humanitarian crises, free from the lengthy and complex negotiations, possibly involving messy compromises that are associated with attempts to find diplomatic solutions. Steele argues that, particularly in the modern TV age, "political negotiations are...inherently dull, if not irrelevant, compared to the visual drama of war."<sup>102</sup>

The idea that force can only be used as a "last resort" is a widely accepted criterion for all Just Wars, and thus also occurs in lists of criteria for humanitarian intervention. The idea has been criticized, since it can never be known for certain that the "last resort" has been reached- there is always the possibility extremely remote as it may be in some cases, that more negotiation might bring results. Mani states that "the notion of lastness is cautionary" rather than to be taken absolutely literally- war is said to be the last resort because of the "unpredictable, unexpected, unintended and unavoidable horrors it regularly brings". Therefore one should always be warned

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<sup>101</sup> Mortimer, Edward. "Under What Circumstances Should the UN Intervene Militarily in a 'Domestic' Crisis?" In *Peacemaking And Peacekeeping For The New Century*. ed. Olara Otunnu & Michael Doyle. Maryland: Rowman & Littlefield, 1998.

<sup>102</sup> Patrick, Stewart & Brown, Kaysie. *'Greater Than The Sum Of Its Parts - Assessing 'Whole of Government' Approaches To Fragile States.'* New York: International Peace Academy, 2007.



to look hard for alternatives before waging it.<sup>103</sup> Waiting for the “last resort” can mean that intervention does not take place until it is too late to stop the abuses. This leads to extremely difficult questions over the circumstances in which it might be possible to justify pre-emptive intervention. Ratner suggests that it is “too demanding to require politicians to exhaust all peaceful remedies: rather, what is required is that they are confident that they have explored all avenues that are likely to prove successful in stopping the violence.”<sup>104</sup> This, unfortunately, is a rather weak formulation, given that politicians who for their own reasons desire war with another state may perhaps persuade themselves that all avenues have been explored when in fact they have not been.

In place of the ‘last resort’ criterion, Meron Frost-vivo, as has been mentioned, professes to work from outside the ‘Just War’ tradition- makes the argument that, in any given case, “what kind of intervention would be justified depends of the severity of the infringements of basic rights”.

Severe infringements justify a military response; lesser violations would justify lighter forms of intervention such as sanctions.<sup>105</sup> This argument is strange since there have certainly been instances of even the most severely abusive governments being overthrown or persuaded to change their ways without military intervention- apartheid South Africa would be one obvious example. It would seem very difficult to justify war, even in the presence of extreme abuses of

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<sup>103</sup> Mani, R. (2002), *Beyond Retribution. Seeking Justice in the Shadows of War* Polity Press, Cambridge, .

<sup>104</sup> Ratner, S.R., Abrams, J.S. (2001), *Accountability for Human Rights Atrocities in International Law. Beyond the Nuremberg Legacy*, 2nd ed., Oxford University Press, Oxford, Vol. 433

<sup>105</sup> Meron, T. F (2000), "On the inadequate reach of humanitarian and human rights law and the need for a new instrument", *American Journal of International Law*, No.77, pp.589

basic rights, where a real possibility exists that these abuses can be ended by peaceful means. Equally it is possible to imagine a case of a government which is only committing moderate abuses, but which is so firmly entrenched in power and so resistant to persuasion that there might be no means other than war of improving the situation. Therefore Frost's criterion does not seem to stand up.

#### 4.2.3: Weak Jurisdiction

Wilkinson argued that intervention was necessarily wrong since it negated the right to self-determination, which he defined as the right of a people "to become free by their own efforts".<sup>106</sup>

Terry adopts a similar position in his Fifth Principle for Perpetual Peace when he says that intervening in an internal conflict is "a violation of the rights of an independent people which is merely struggling with its internal ills."<sup>107</sup>

Mill's argument- which is based on the idea that political freedom depends on the existence of individual virtue and which seems to imply that those who suffer violation of their rights bring it upon themselves through their own weakness- sounds excessively harsh to modern ears. Humanitarian intervention removes incentives for local groups to negotiate a solution to a conflict by themselves, and may indeed provide encouragement for representatives of the perceived 'victims' in a conflict to escalate it in order to provoke outside intervention. It is also the case that humanitarian intervention involves the imposition of an artificial conclusion to a conflict by outsiders who may or may not have a clear idea of the how and why of that conflict.

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<sup>106</sup> Wilkinson, Philip. "Sharpening the Weapons of Peace." in *Peacekeeping and Conflict Resolution*, eds. Tom Woodhouse & Oliver Ramsbotham. London: Frank Cass, 2000.

<sup>107</sup> Terry, Fiona. *The Paradox of Humanitarian Action - Condemned to Repeat? Ithaca:* Cornell University Press, 2002.

The humanitarian rhetoric of political leaders and journalists- and, sometimes, of academic theorists- tends to label one side in a conflict as 'victims' and the other as 'villains', which may not always reflect the true situation. As would be expected, the established criteria for a legitimate humanitarian war are influenced by the Just War tradition, and contain many elements that are common also to 'Just Wars' fought in self-defense or in response to aggression for example, the requirement for force to be a 'last resort'. There are some features, however, that are unique to the theory of humanitarian war; for example, a state fighting a war in self-defense is not required to seek wide international backing before it does so, but theorists often make this a requirement for humanitarian wars.

The first generally accepted criterion is that intervention should be restricted to cases of particularly extreme abuse of human rights- in Zalaquett phrase, acts "that shock the moral conscience of mankind".<sup>108</sup> These would include such acts as genocide, state-sponsored mass murder, mass population expulsions and state breakdown. Mani advocates restricting humanitarian intervention to those cases where "basic rights"- those rights without which no others can be enjoyed, such as the right to life and to subsistence- are being denied.<sup>109</sup> These are the minimal 'basic rights' which, as we saw earlier, liberals argue can and should be protected even by decent non-liberal societies.

This point of view is not universally accepted. Zalaquett notes that some theorists adopt the position that intervention can be justified merely on the basis of the target government not being a liberal democracy.<sup>110</sup> Mani, for example, has argued that undemocratic states have no right to

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<sup>108</sup> Zalaquett, J. (1998), "Moral reconstruction in the wake of human rights violations and war crimes", in Moore, J. (Eds), *Hard Choices*, Rowman & Littlefield, Lanham, MD, pp.211-27.

<sup>109</sup> Mani, R. (2002), *Beyond Retribution. Seeking Justice in the Shadows of War*, Polity Press, Cambridge,

<sup>110</sup> *ibid*

sovereignty since “traditional concepts of sovereignty (are) being replaced by a ‘popular sovereignty’ vested in the individual citizens of a state.”<sup>111</sup> Therefore intervention to institute or restore democracy cannot be a violation of sovereignty given that by their very existence, authoritarian governments are violating popular sovereignty. However, the majority of theorists do not go this far. Given the difficulty of assessing which governments should be considered liberal democracies and which should not, a right of pro-democratic intervention would be exceptionally open to abuse, and could potentially allow states to go to war simply because they objected to the ideology of another government.

Certainly when in the 1980s the US government proclaimed a right to pro-democratic intervention under the ‘Reagan doctrine’,<sup>112</sup> it was applied in a highly selective fashion, being directed against “Soviet-supported” governments such as Grenada but not against right-wing dictatorships. To further illustrate the slipperiness of the idea, the Reagan administration argued that it was promoting democracy in its proxy war against the Sandinista government in Nicaragua: a government which some who did not share Reagan’s ideological position regarded as closer to being a democracy than many of the US’s Latin American allies. So, as it is a minority position among theorists, arguments over the right to pro-democratic intervention will not be addressed at great length in this thesis. Some who adopt the more restrictive position on when intervention can be legitimate have argued that humanitarian intervention should be treated as an exception, reserved for rare cases, and thus outside the ordinary rules and conventions of

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<sup>111</sup> Ibid

<sup>112</sup> Powers, S. (2002), *A Problem from Hell. America and the Age of Genocide*, Basic Books, New York, NY,

international law. However, abuses of human rights- even extreme abuses- are depressingly common, so common in some countries as “to seem almost like facts of nature”<sup>113</sup> - so even on the most restrictive basis, there are likely to be many possible cases where humanitarian intervention potentially could be justified. Clearly, then, it is not enough to avoid the issue by regarding humanitarian intervention as somehow outside ordinary custom and calculation.

It is often interpreted as a requirement for a reasonable expectation that the intervention will produce a “surplus of good over harm”. That is, that the damage caused by the use of force will probably be less than the gravity of the human rights violations that would have occurred if intervention had not taken place.<sup>114</sup> This criterion has been criticized for being excessively uncertain, as there are so many imponderables involved that, as Wheeler admits, “even if intervention produces a surplus of good over harm, it will never be known whether non-violent alternatives might have achieved the same result at less cost.

Proportionality’, though it is listed among the accepted criteria for the jus ad bellum in a humanitarian war, is also used to refer to concepts that have more to do with the jus in bello and the jus post bellum, such as the idea that a humanitarian intervention must be limited in purpose, for example merely to rescuing the victims of oppression, not to imposing a long-term settlement.

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<sup>113</sup> Zartman, I.W. (1995), (Eds), *Collapsed States, The Disintegration and Restoration of Legitimate Authority*, Lynn Rienner, Boulder, CO, pp.201.

<sup>114</sup> Ibid

A humanitarian intervention should win international support or at least acquiescence- and, ideally, should gain authorization from the UN Security Council. Unilateral intervention is permitted, if at all, only if the Council is for some reason unable or unwilling to act.<sup>115</sup> If UN authorization cannot be obtained, then it is preferable for an intervention to be undertaken by a regional organization rather than a single power.

This requirement for international support, it is argued, should help to keep a single state from abusing the concept of humanitarian intervention for its own ends; although a problem arises if a superpower is able to browbeat its allies into offering support against their better judgment. Some other, more minor, conditions are added by individual theorists. Frost, for example, adds requirements that intervening powers should avoid propagandizing, and that "care should be taken not to label the entire people or ethnic groups as the enemy, but only specific, named people". This is because it is, he argues, political leaders of 'outlaw states' who are responsible for human rights violations, not ordinary civilians.<sup>116</sup> These leaders and their henchmen are the ones who should be deionized.

#### 4.2.4: Selectivity Intervention

As we have seen, realist international relations theory suggests that foreign policy is driven more by national interest and power calculations rather than by ethical concerns. Thus, from this point of view, there can be little utility in granting a 'right' of humanitarian intervention, since states would only rarely, if ever, choose to exercise such a right in good faith. As Weir put it: "In

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<sup>115</sup> Goldstone, R. (1997), "War crimes: a question of will", *The World Today*, Vol. 53 No.4, pp.106-8.

<sup>116</sup> Ratner, S.R., Abrams, J.S. (2001), *Accountability for Human Rights Atrocities in International Law. Beyond the Nuremberg Legacy*, 2nd ed., Oxford University Press, Oxford, Vol. 433

theory no doubt it is regrettable that international law should prohibit... the suppression of outrage, but in practice the number of national Don Quixote's is not found to be considerable"<sup>117</sup>

The concept, it is argued, is merely likely to be abused by powerful states using it to serve their own ends. It clearly has been abused in the past: some of the most blatant acts of aggression in history have been justified on humanitarian grounds. Hitler's occupation of Bohemia and Moravia ostensibly an intervention to protect the rights of the Sudeten Germans from "assaults on life and liberty by the intolerable terroristic regime of Czechoslovakia"<sup>118</sup> being the most famous example. More recently, the war in Iraq has been widely cited as a case of the concept being abused. Humanitarian grounds formed only a part of the justification given at the time of the invasion, but have been more frequently cited since as the other justifications for the war have collapsed.

Some theorists did view Iraq as a legitimate humanitarian war, but probably the majority view, even at the time of the invasion, was that this was not the case, since, though the Hussein regime was undeniably brutal, there was no imminent or ongoing humanitarian crisis in Iraq in 2003.<sup>119</sup> Goodhand states that the Iraq war was unjustified as a humanitarian intervention since the regime's most serious crimes had occurred more than a decade before the invasion, and the Kurds- who had been the main targets of the massacres of the 1980s and early 1990s- had already been fairly well protected by the enforcement of no-fly zones. Kenneth Roth, the director of Human Rights Watch, warned in 2004 that the war in Iraq could taint calls for humanitarian

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<sup>117</sup> Weir, Erin, A. "Conflict or Compromise: UN Integrated Missions and the Humanitarian Imperative." in *KAIPTC Monograph* (Sept. 2007).

<sup>118</sup> Roberts, Adam. "Humanitarian War: Military Intervention and Human Rights." In *The Journal of International Affairs* Issue 69 (1993).

<sup>119</sup> Goodhand, Jonathan & Atkinson, Philippa. "Conflict and Aid: Enhancing the Peacebuilding Impact of International engagement." *International Alert*, 2001.

war in the future.<sup>120</sup> Another element of this critique has to do with the principle of impartiality that has traditionally governed the work of those involved in humanitarian aid. For example, the founding principles of the International Committee of the Red Cross include impartiality (“It (the ICRC) makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavors only to relieve suffering”) and neutrality (the ICRC “may not take sides in hostilities” under any circumstances).<sup>121</sup> Humanitarian wars, some argue, tend to violate these principles in the manner in which they are justified and fought. Governments, says former aid worker Tony Vaux, “are much less concerned than aid agencies about impartiality.

They intervene, on one hand, and demonize on the other. Politicians can only cope with situations where there is a winner and a loser, a right and a wrong”.<sup>122</sup> The result is that, in humanitarian wars- as we have seen- outsiders arbitrarily divide up populations into those who are seen as deserving help and those seen as being responsible, actively or tacitly, for atrocities, and help is handed out according to ethnicity rather than need. Humanitarian crises are rarely so morally simple. Roberts says of the Red Cross principles that “a man who follows this arduous path (of neutrality) will discover that it is rare in a controversy to find that one party is completely right and the other is completely wrong. He will sense the futility of the reasons commonly invoked to launch one nation into war against another. In this respect it is reasonable to say that neutrality constitutes a first step towards peace.”<sup>123</sup>

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<sup>120</sup> Ibid

<sup>121</sup> Etxeberria, Xavier. “The Ethical Framework of Humanitarian Action.” in *Reflection on Humanitarian Action*. London: Pluto Press, 2001.

<sup>122</sup> Ibid

<sup>123</sup> Roberts, Adam. “Humanitarian Principles in International Politics in the 1990s,” In *Reflections On Humanitarian Action – Principle, Ethics and Contradictions*. London: Pluto Press, 2001: 23-54.



It is also sometimes argued that the motives of the intervening power or powers must be humanitarian rather than self-interested. The International Law Association, when drafting a protocol for judging the legality of armed intervention, included a requirement that the "primary goal" be humanitarian.<sup>124</sup> This controversy relates to the divide in ethical theory between consequentialists, who argue that the moral acceptability of an action should be judged mainly in terms of its consequences, and deontologists (such as Kant) who argue that motives are more important. (This is not necessarily an absolute divide. Under some circumstances one might argue that motives are important because they tend to have a strong impact on outcomes.

Liberalism has historically tended to straddle both sides of the divide<sup>125</sup>, but theorists of humanitarian intervention theorists tend to adopt the consequentialist view, arguing that whether an intervention leads to an acceptably humanitarian outcome is more important than the motives, humanitarian or otherwise, of those who conducted it. One suspects that this is largely because there are virtually no historical examples of genuinely non-self-interested intervention taking place. Even in the historical examples most often cited as the 'best cases' of humanitarian intervention, the intervening government has always had some self-interested motive for its actions. For example, India's intervention in Bangladesh (then East Pakistan) in 1971 was conducted with the aim of weakening Pakistan as well as of helping the Bangladeshis.

Mani attempts to solve this problem by stating that intervention must take place in order to allow the oppressed to achieve their purpose (i.e. the intervening power must not claim any prerogative

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<sup>124</sup> Lederach, Jean, Paul. *Building Peace Sustainable Reconciliation in Divided Societies*. Washington: United States Institute for Peace, 1997.

<sup>125</sup> Goldstone, R. (1997), "War crimes: a question of will", *The World Today*, Vol. 53 No.4, pp.106-8.

over them once hostilities have ceased)<sup>126</sup>; Harding, by stating that the interests of the interveners must at least not be incompatible with the humanitarian purpose.<sup>127</sup>

#### 4.3: Solution to the Challenges Facing Humanitarian Intervention Norms

The international community has grappled with the recurring challenges of modern humanitarian intervention: establishing legitimacy, sharing burdens across nations, acting with proportionality and discrimination, avoiding “mission creep,” and developing exit strategies.<sup>128</sup> These challenges have not changed, but the ways the international community responds to them have. Today’s successful interventions share a number of elements absent in earlier, failed missions.<sup>129</sup>

First, the interventions that respond the most quickly to unfolding events protect the most lives. Ethnic cleansing and mass atrocities often occur in the early phases of conflicts, as in Rwanda and Bosnia. This highlights the necessity of early warning indicators and a capacity for immediate action. The UN still lacks standby capabilities to dispatch peacekeepers instantly to a conflict area, but national or multinational military forces have responded promptly under UN authority, and then after a number of months, they have handed off control to a UN peacekeeping force that may include soldiers from the original mission. Second, the international community has learned from Somalia, Rwanda, and Bosnia that it needs access to enough military power and diplomatic muscle to back up a credible commitment to protecting civilians and to prevail even if

<sup>126</sup> Mani, R. (2002), *Beyond Retribution. Seeking Justice in the Shadows of War*, Polity Press, Cambridge,

<sup>127</sup> Harding, T.W. (2003), “Torture”, in Cahill, K.M. (Eds), *Traditions, Values, and Humanitarian Action*, Fordham University Press and the Center for International Health and Cooperation, New York, NY, pp.191-211.

<sup>128</sup> Goertz, Gary & Diehl, Paul F., „Towards a Theory of International Norms: Some Conceptual and Measurement Issues”, *Journal of Conflict Resolution*, Vol.36, No.4 (1992), pp.634-664

<sup>129</sup> Rana, Raj. “Contemporary challenges in the civil-military relationship: Complementarity or incompatibility?” in *International Review of the Red Cross*, 86:853 Geneva: ICRC, September 2004.

things go wrong along the way. Lighter deployments may also succeed if members of the international community have additional forces close at hand that can be accessed if needed. When UN peacekeepers ran into trouble in Sierra Leone in 2000, for example, the United Kingdom rushed in with 4,500 troops to save the government and the peacekeeping mission from collapse.<sup>130</sup> Third, intervening governments must be sensitive to inevitable opposition from domestic constituencies and must design interventions that can withstand pressure for early exits.<sup>131</sup> As Libya has demonstrated, protecting civilians from intransigent regimes often requires persistent and sustained action. In all likelihood, seemingly straightforward operations will turn out to be much less so. In past, a failed mission, the international community was unwilling to accept coalition casualties and responded by withdrawing. Successful interventions, by contrast, have been designed to limit the threat to the intervening forces, thus allowing them to add resources and broaden the dimensions of the military operations in the face of difficulties.

Fourth, legitimate humanitarian interventions must be supported by a broad coalition of international, regional, and local actors. Multi-lateral interventions convey consensus about the appropriateness of the operations, distribute costs, and establish stronger commitments for the post-intervention transitions. But multilateralism cannot come at the expense of synchronized leadership. War criminals usually look to exploit divisions between outside powers opposing

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<sup>130</sup> Miall, Hugh, Oliver Ramsbotham, & Tom Woodhouse. *Contemporary Conflict Resolution*. Cambridge: Polity Press, 2004. *Journal of Military and Strategic Studies*, Fall 2007, Vol. 10, Issue 1. 45

<sup>131</sup> Domini, Antonio, and others. "Mapping the Security Environment: *Understanding the Perceptions of Local Communities, Peace Support Operations and Assistance Agencies*." A report commissioned by the UK NGO-Military Contact Group. Feinstein International Famine Center, Tufts University: Medford, MA, USA. (2005).

them. Interventions need to avoid having multiple states and organizations dispatch their own representatives to the conflict, sending mixed signals to the target states.

#### 4.4 Conclusion

Successful transition strategies include several crucial elements. For starters, negotiations that end humanitarian interventions must avoid laying the groundwork for protracted international presences. The Dayton peace accords,<sup>132</sup> for example, created a dual-entity structure in Bosnia that has privileged nationalist and ethnic voices, and Kosovo's final status was left unresolved. Both of these outcomes unwittingly created long-term international commitments. Intervening powers must also proceed with the understanding that they cannot bring about liberal democratic states overnight. Objectives need to be tempered to match both local and international political constraints. Recent scholarship on post conflict state building suggests that the best approach may be a hybrid one in which outsiders and domestic leaders rely on local customs, politics, and practices to establish new institutions that can move over time toward international norms of accountable, legitimate, and democratic governance.<sup>133</sup> Humanitarian interventions involve an inherent contradiction: they use violence in order to control violence.<sup>134</sup> Setbacks are almost inevitable, and so it is no surprise that the operations often attract criticism. Some observers, then, have demanded that any intervention be carried out with a clearly defined exit strategy. Yet more important than an exit strategy is a comprehensive transition strategy, whereby foreign

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<sup>132</sup> Michael J. Smith (1998) 'Humanitarian Intervention: An Overview of the Ethical Issues', *Ethics and International Affairs*, 12 (1998), p. 78.

<sup>133</sup> Kolb, R. (1998), "The relationship between international humanitarian law and human rights law: a brief history of the 1948 Universal Declaration of Human Rights and the 1949 Geneva Conventions", *International Review of the Red Cross*, No.324, pp.409-19

<sup>134</sup> Victoria Wheeler, Victoria & Harmer, Adele, ed. "Resetting the Rules of Engagement – Trends and Issues in Military-Humanitarian Relations." *Humanitarian Policy Group Research Report*, Overseas Development Institute, Report 21 (March 2006)

combat forces can exit as peacekeepers take over, and peacekeepers can exit when local governing institutions are in place and an indigenous security force stands ready to respond quickly if violence resumes.<sup>135</sup> The earliest phases of an intervention must include planning for a transition strategy with clearly delineated political and economic benchmarks, so that international and local authorities can focus on the broader, long-term challenges of reconstruction, political reconciliation, and economic development.

Perhaps the most daunting challenge of a humanitarian intervention is the exit. Because violence against civilians is often rooted in deeper crises of political order, critics note that once in, interveners confront the dilemma of either staying indefinitely and assuming the burdens of governance, as in Bosnia, or withdrawing and allowing the country to fall back into chaos, as in Somalia.

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<sup>15</sup> Mary Kaldor, 'A Decade of Humanitarian Intervention: The Role of Global Civil Society', in Helmut Anheier, Marlies Glasius and Mary Kaldor (eds), *Global Civil Society 2001* (Oxford, Oxford University Press)

## CHAPTER FIVE

### CONCLUSION

#### 5.1: Key findings

According to the study the most powerful normative tension surrounding these actions is that between self-determination and humanitarian intervention. International legal scholars, among others, have written extensively about conflicts between such interventions and sovereignty norms, but sovereignty has hardly proved an insurmountable barrier to intervention and, in fact, has always been malleable and conditional in a host of ways. Even among legal scholars, notions of sovereignty are coming under pressure to include understandings that would allow or even require intervention by outsiders in cases of humanitarian crisis and gross human rights abuse.

Underlying much of this malleability of sovereignty are two other sets of norms which the researcher argue that they are more basic and more powerful. One is human rights norms, discussed above. The other is self-determination norms, which have come to be intimately connected to human rights. In discussions about whether to intervene in humanitarian crises, sovereignty norms are almost always invoked by those resisting intervention and have become increasingly discredited by those advocating broader humanitarian action.

Self-determination norms are more interesting and consequential precisely because even those who support broad and active policies of humanitarian action strongly support self-determination. In fact, humanitarian interventions are often done, in part, to promote self-determination of perceived victims. The study found that currently the main challenge for the protection norm is still the crisis in Darfur. Although, the possibility of genocide was already

indicated years ago, the international community seems to be hesitant to react. The hesitant reactions are in some degree a result of the decision-making process in the UNSC on Darfur. We clearly refuse the common perception that Darfur shows a total failure of the R2P, because the lack of an intervention in Darfur does not fully indicate what happened to the R2P. The debates in the UNSC on Darfur undoubtedly consider the developments that took place after 1995.

Above and beyond, for humanitarian intervention to be carried out as it is originally meant for; i.e. for sole purpose of the protection of human beings, it requires an impartial authority for its implementation and monitoring. Of course impartiality is a contested concept. How could an international organization be impartial? But what is meant with impartial here is for an organization to account equally for the will of people in this world and to represent them as fair as possible. The UN is always referred to as the main international body for such function, but the UN as it stands today is full of contradictions and deficiencies and for it to be such impartial body, it has to be seriously reformed or completely replaced. The contradicting fundamentals of protecting sovereign states, yet protecting individual human rights seem to be deeply rooted and uncomfortably unresolved within the UN body. States have established the UN for the purpose of maintaining a world order that would not allow for a third destructive world war. It was established for a world order based solely on states and in which military might and wars between states are the only dangers to international peace and security. Not only the UN is full of internal contradiction, it is also completely controlled politically and financially by its member states and their willingness to mount for a humanitarian action. The UN is faced with states reluctance to give up their sovereignty and independence for a different world arrangement in which human rights would precede state sovereignty.

## 5.2 Conclusion

Compared to former debates the argumentations have changed significantly, and the R2P has become an important reference in the debates. However, it is instrumental not only by supporters, but also by opponents of the R2P. China usually argues with the R2P to demand support for the Sudanese government, which contradicts the meaning of the R2P, but is in some way coherent with the concept. As the case of Darfur exemplifies, the importance of norms as a rhetoric instrument for legitimizing politics in international discourses seems to have been underestimated so far. The norm has now fully emerged, but significant changes and progress since the 1990s. Focusing on the UNSC is only one possible perspective, as other actors or structural factors may have contributed to the norm as well.

From researcher perspective, however, the decision-making process of the UNSC remains one of the most important contributions to the emergence of the protection norm. This development has been further strengthened by resolutions on the protection of civilians in armed conflict, which referred directly to the R2P, and resulted in Resolution 1674 in April 2006. Here the UNSC finally reaffirms the provisions regarding the R2P made on the 2005 World Summit. The protection norm is still in the making and the UNSC is actively involved in this process. Having surveyed the principal arguments about the norms of humanitarian intervention, the researcher concluded by offering the following three observations. The study concludes that some the actors in the humanitarian intervention process are serving the interest of their own state actors or sub-state actors through which political gains are secured and are more likely to undermine peace efforts. International law can be read as either allowing or forbidding international humanitarian intervention, and the legal uncertainty around humanitarian intervention is fundamental and irresolvable. Contradictory and plausible interpretations about the legality of any act of



intervention exist simultaneously, and neither can be eliminated. This does not mean that the law is unimportant; there are evident costs and benefits to states in being seen as following the rules. It means instead that law and law following should be seen as resources in the hands of states and others, deployed to influence the political context of their actions.

### 5.3 Recommendations

The study further concludes that there is dearth of proper legal framework and pillar of the UN system to adhere to during humanitarian interventions. This is mainly witnessed by unclear and vague legal framework, which results to different interpretation from different individuals. Finally the study concludes that norms regarding humanitarian interventions in the east African region are new issues of concerns which need to be addressed through concrete policies as well as practical initiatives. The researcher recommends that humanitarian intervention bodies; states; or organizations should ever aim to be neutral; impartial and to act with consent of the main parties to the conflict. There is no consensus over the legality of intervention, in part because there is no consensus over the sources of international law more generally.

The intervention problem is inseparable from questions that have been at the heart of international law for centuries, and that we cannot expect to be answered in order to reconcile the different views on humanitarian intervention. The legality of humanitarianism is therefore contingent on one's theory of how law works and changes. The law may well be incoherent, and it may be unable to distinguish between compliance and noncompliance, but it remains politically powerful and therefore important. The challenge for scholars is to explain how it is that the commitment to the rule of law coexists with this fundamental ambiguity. The study

further recommends that proper legal framework, policies and UN system should be formulated in order to enhance effectiveness of humanitarian intervention. The researcher recommends that future researchers should carry out further study in area of effect of humanitarian intervention on state sovereignty. It had mixed result and contradicted other research thus the need for further research. This is due to the need for clarification of the effect of humanitarian intervention on state sovereignty. The study further recommends a similar study should be done on a different political block for comparative purpose.

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## APPENDICES

### APPENDIX I: INTERVIEW GUIDE

#### Section A: Humanitarian interventions

- 1) According to your own opinion what are the norms that are adhered to during humanitarian intervention and what can be done to attain effectiveness?
- 2) Why and how do norms influence humanitarian intervention actors?
- 3) What characterize state interests and how does it influence humanitarian intervention?
- 4) Do you believe that humanitarian intervention is as result of geostrategic or economic interest?
- 5) How does norms as a social constructs, been advocated for and contested by various actors in international society?
- 6) How can you describe the humanitarian intervention norms in Darfur, Somali? And what factors influence the humanitarians' norms in the two states?
- 7) Do you agree that humanitarian intervention in Darfur, Somali and Rwanda was "too little too late"?
- 8) What is your view on withdraw of UN forces and U.S. forces from Somalia, and leaving it in chaos?
- 9) Has International Organization Failed to guarantee unbiased humanitarian interventions
- 10) Which circumstances are morally justified for armed humanitarian intervention?
- 11) Which are the ways in which norms and political and practical considerations affect the ends, ways, and means of humanitarian intervention?

## Section B: Legal framework

- 12) Do you agree that some humanitarian interventions lack legitimacy and their justifications are wanting? Give examples
- 13) Do you believe humanitarian intervention has been impartial, neutral, and independent when protecting the lives and dignity of victims of armed conflict and other situations of violence?
- 14) What are the efforts among aid workers to elaborate common values and standards on humanitarian intervention?
- 15) Do you agree that the state sovereignty is interfered with by the emerging international norms related to the use of force for humanitarian purposes?
- 16) How effective is UN Charter on humanitarian intervention
- 17) Which are the legal constraints towards humanitarian intervention?

## Section C: Policies

- 18) What should UN do to build upon its peacekeeping record and even expand its scope to peace-enforcing?
- 19) Historical record of humanitarian interventions is more one of failure than success; (Rwanda and Darfur), why do you think it is so?
- 20) Through which ways can humanitarian intervention work in the future?
- 21) Do you believe that East African region lacks concrete policies as well as practical initiatives for humanitarian intervention activities?
- 22) How effective is the Responsibility to protect on humanitarian intervention
- 23) What are the key principles that humanitarian intervention should follow?