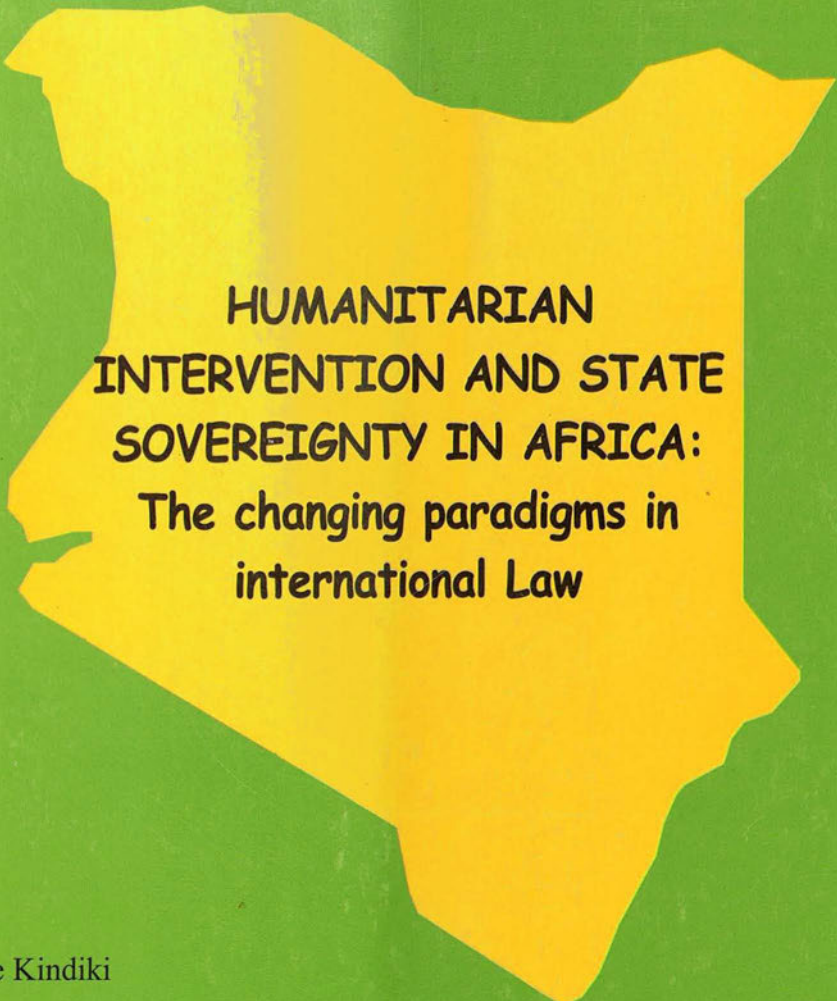


C
R
S

Occasional Paper Series Vol 1 No. 3 2003

ISSN:1727-1746



**HUMANITARIAN
INTERVENTION AND STATE
SOVEREIGNTY IN AFRICA:
The changing paradigms in
international Law**

Kithure Kindiki

**HUMANITARIAN INTERVENTION AND
STATE SOVEREIGNTY IN AFRICA:
The changing paradigms in international Law**

Kithure Kindiki*

Moi University Press, Moi University, Eldoret Kenya

© Centre for Refugee Studies, Moi University

All rights Reserved. Published 2003

Disclaimer

Responsibility for opinions or views expressed and the accuracy of the facts presented in this publication rests solely with the author(s) and not with the Centre for Refugee Studies, (CRS), or its officers.

Acknowledgement

The author is grateful to the Centre for Refugee Studies, Moi University and the Ford Foundation for supporting the research and publication of the study

INTRODUCTION

In the spring of 1994, an estimated 800 000 people were killed in Rwanda in one of the worst cases of genocide in world history since the holocaust.¹ During the genocide, gross violations of human rights were committed against civilians, many of whom were tortured before being murdered using crude weapons like machetes and nail-studded clubs. Despite the publicity given to the genocidal activities in both print and electronic media world-over, the international community largely failed to protect the Rwandan people from the atrocities.²

The Rwandan genocide, its devastating effects and the inability of the international community to prevent, limit or halt the atrocities came at a time when many African countries were, and still are, engulfed in deadly armed conflicts, most of which are intra-state in origin.³ They also came at an extra-ordinary time in history when so many ideas, relationships and institutions, which hitherto seemed solid, had began to 'dissolve' rapidly.⁴ In the aftermath of the Rwandan genocide, debate has persisted regarding whether there are new emerging norms on when and how the international

* Kithure Kindiki is a lecturer in the Faculty of Law Moi University

1. The exact number of those who were killed during the 1994 Rwandan genocide has never been known. Estimates range from 500 000 to 1 000 000 persons. See UN DOC E/ CN.4/1994/7 (1994) Para 24. See also, *Final Report of the Committee of Experts Established Pursuant to UN Security Council Resolution 935* (1994), S/1994/1405 of 9 September 1994; and the *Reports of the United Nations Special Rapporteur on the Situation of Human Rights in Rwanda*, docs E/CN.4/1995/7 and E/CN.4/1996/68.
2. The failure of the international community to forestall the genocide was described in the *Report of Eminent Personalities to Investigate the Genocide in Rwanda and the Surrounding Events*, CM 12048 (LXVII) 29 May 2000. See also International Panel of Eminent Personalities (2000) *Rwanda: The Preventable Genocide* U/IPEP/PANEL, also available online at <<http://www.oau-oua.org/Document/ipep/rwanda-e/EN.htm>> (accessed on 1 August 2002). UN Secretary-General Kofi Annan, during a visit to Rwanda in 1999, acknowledged that the international community failed Rwandans and that the genocide could have been prevented by early action. The Secretary-General's 'apology' is also contained in United Nations (1998) Para 7.
3. For a detailed account of international armed conflicts in Africa and their impact, see Mekankamp *et al* (eds) (1999), generally. See also Solomon in Mekankamp *et al supra* (1999) 34 (stating that 'of the 48 genocides and 'politicides' registered throughout the world between 1945 and 1995, 20 took place in Africa, the vast majority of them being intra-state in origin'); According to the 1998 Report of the UN Secretary-General regarding causes and effects of armed conflicts in Africa, 14 out of the 53 African countries were involved in armed conflicts at the time, accounting for more than half of all war-related deaths and resulting to more than eight million refugees, returnees and internally displaced persons.

community can justifiably intervene to ameliorate and prevent domestic national conflicts and widespread human rights abuses.⁵

Until very recently, the question whether it can be permissible for the outside world to intervene with military force in the internal affairs of a sovereign country would have struck many as a non-issue.⁶ Sovereign countries, by definition, were not to be intervened in. A lawful war, it was explained, was a war in which a country sought to defend itself, or to defend a friend and ally, against an attacking enemy. To go to war in order to change the way another country was conducting its affairs was therefore illegal. Then, in 1999, it began to look as if minds were changing. In that year a 'war of intervention' was messily but successfully fought over Kosovo, as a result of which the Balkans are a rather better place than they were before.⁷ A near-war of the same sort triumphantly achieved its purpose in East Timor, freeing a captured people from the rule of the Indonesian Army.⁸

This contribution examines the myriad dilemmas posed by collective international intervention, weighing the issue of state sovereignty and the concomitant doctrines of non-intervention and non-use of force against the perceived need for collective action to stop conflicts that often lead to bloodshed and human suffering. The contribution inquires if the so-called right or duty of humanitarian intervention has a basis in contemporary international law, and if so when, how and by whom the right or duty may be invoked.⁹

-
5. Reed & Kaysen (1993) 5. Some of the writings of the post-Rwandan Genocide period, relating to the issue of humanitarian intervention, include Harriss (1995), Reisman (1997), Kritsiotis (1998), and Abiew (1999).
 6. See *The Economist* (New York) 6 January 2001 17. For views that in no way is intervention in 'internal affairs' permissible, even for humanitarian reasons, see Dugard (2000) 423, who declares that intervention in internal affairs is a cardinal rule of both customary and treaty international law, and argues that with regard to humanitarian intervention, 'the weight of authority is against the recognition of [such a right]'. See also, Chigara (2000) 58 62.
 7. On the intervention in Kosovo, see generally, Kritsiotis (2000).
 8. *The Economist* (New York) 6 January 2001 17.
 9. Both the concepts of 'duty' and 'right' in respect to humanitarian intervention are subject to academic controversy. See, for instance, Kratochwil (1995) 21 35 (stating that a 'right' to intervention cannot be construed from the point of view of misuse of power by a government, because 'the violation of a right does not automatically vest a third person with either a duty or the right to correct the infraction'). However, some authors make reference to the 'right' of humanitarian intervention. See, for instance, Kritsiotis (1998), generally. In this contribution, the term 'duty' is preferred because human rights law creates a duty to protect, promote and fulfil fundamental rights. This duty is primarily on the state where the infraction occurs and in the event of failure by that state to guarantee the rights, the duty shifts to the international community acting, for example, through international human rights monitoring mechanisms. Also, as the intent of humanitarian intervention is to protect human rights, then it is not conceivable that states have 'rights' in international human rights law. Instead, the general view is that states have duties or obligations.

HUMANITARIAN INTERVENTION

A Conceptual Analysis

Humanitarian intervention is a particular type of intervention, and any attempt to define the former requires an understanding of the latter. Despite its salience and description of an age-old phenomenon, the concept of intervention suffers from ambiguity and lack of definitional clarity.¹⁰ The general notion of intervention is derived from the Latin verb *intervenere*, meaning to 'step between', 'to disrupt' or 'to interfere'.¹¹ In international law, Emerich de Vattel first defined intervention in 1758 as 'a breach of the sovereignty of the target state'.¹² Oppenheim, also viewing intervention as an invasion of state sovereignty defined it as:¹³

[the] dictatorial interference by a state in the affairs of another state for the purpose of maintaining or altering the actual conditions of things.

A definitive notion or a universally acceptable definition of the term 'intervention' is singularly absent, making most attempts to define the term somewhat static and futile.¹⁴ In addition, the concept covers an ever widening spectrum of phenomena and field of activity. Thus the concept has been regarded as the 'twilight area' where power, self-interest, international law and morality meet as constitutive elements of the international system.¹⁵ In this study, 'intervention' will be taken to mean any coercive or forcible interference by an external authority in the sphere of jurisdiction of a sovereign state.¹⁶

10. Rosenau (1969) 155.

11. Du Plessis (2000) 4.

12. See Otte & Dorman (1995) 3, citing E Vattel (1758) *Les Droit des Gens ou Principe de la Loi Naturelle* London 1 Para 3.

13. Oppenheim (1905) 272.

14. Du Plessis (2000) 5; for a discussion of this 'problem of definition' or 'intervention puzzle', see Bull (1984) 1- 6 and Reed & Kaysen (1993) 65-68.

15. Du Plessis (2000) 5.

16. This definition draws from that in Bull (1984) 'Introduction'; and that in Teson (1988) 5.

Having seen the meaning of 'intervention', we now turn to the concept of 'humanitarian intervention', which, as stated earlier, is a particular type of intervention. Definitions of 'humanitarian intervention' can be classified into two broad categories: the traditional (classical, narrow) and the liberal (wider) definitions. With respect to who may intervene, classical definitions ascribe the right or duty of humanitarian intervention to states only. Teson adopts this definitional scope and defines humanitarian intervention as follows:¹⁷

[It is] the proportionate transboundary help, including forcible help, provided by governments to individuals in another state who are being denied their basic human rights and who themselves would be rationally willing to revolt against their oppressive government. (Emphasis added).

The liberal definitions encompass humanitarian intervention by entities other than states. These definitions use different terms but essentially, are wider and include intervention by international organisations.¹⁸ Invariably, this would entail any humanitarian action by any international agency or authority, so long as a humanitarian impulse is the sole authoritative basis for the action in question. Classical and liberal definitions also differ with regard to what type of action constitutes humanitarian intervention. The classical view is that the intervention has to involve the use of force. Even within this school of thought, some writers confine the concept of humanitarian intervention to those protective activities that involve the use of military force.¹⁹ Others, while agreeing that humanitarian intervention involves coercive and forcible measures, argue that the intervention may be effectuated not only through military action, but also through non-forcible means such as political or economic pressure.²⁰

In contrast, liberal definitions view any form of intervention as humanitarian, so long as the purpose of the intervention is to protect human rights in the target state.²¹ Kwakwa, for instance, takes this viewpoint and argues that humanitarian intervention

17 Teson (1988) 5.

18 For various 'liberal definitions' see Reisman (1997) 432; Harris (1995), generally; and Kwakwa (1994) 9 15.

19 See Verwey (1986) 57 59.

20 Verwey (1986) 75; see also Farer (1991) 185 (Humanitarian intervention is 'the threat or use of force by one state against another for the purpose of terminating the latter's abuse of its own nationals').

21 See Kwakwa (1994) 9 15; Hariss (1995), generally; Reisman (1997) 432.

may take various forms, ranging from 'very mild and non-violent means' such as 'public criticisms and persuasion, direct satellite broadcasting, the financing of political parties, to forcible means [involving] the use military instruments'.²²

The aim of intervention is to forestall, limit or halt large-scale violations of human rights in the target state, where the government of the target state is either perpetrating the violations or is unable or unwilling to allow international action to end them. Thus humanitarian intervention is not just any action by external actors to relieve a humanitarian crisis for which the territorial authorities are responsible or with which they are unable to cope. On the basis of the above understanding, Franck and Rodley define humanitarian intervention as the use of force so as to protect the inhabitants of another state against 'treatment that is so arbitrary and persistently abusive as to exceed' the 'limits of reason and justice'.²³ Similarly, Baxter opines that for an intervention to be deemed humanitarian, there ought to be 'egregious violations of human rights' taking place in the target state.²⁴

Humanitarian intervention differs from related concepts, such as 'humanitarian action', 'humanitarian operations' or 'humanitarian assistance'.²⁵ Humanitarian action or operations reflect a whole spectrum of humanitarian responses to conflict and crisis situations, and many of those responses may not necessarily involve the use of force. Humanitarian assistance on its part is the act of providing aid to the government or population of a state, in order to alleviate human suffering. The assistance may be in the form of famine relief, disaster relief, sanctuary of refugees or providing for the population's needs for food, shelter and healthcare.²⁶ Although in all the cases presented

22 Kwakwa (1994) 11-12; see also Damrosch (1989) 1, where she discusses intervention by governments in the internal affairs of others by granting financial assistance to influence the outcome of elections.

23 Franck & Rodley (1973) 275 305.

24 Baxter (1973) 53.

25 These terms were adopted by participants of a workshop under the auspices of the Academic Council on the UN System, Windhoek, Namibia 5-18 August 2001. See ACUNS (2001) (copy with the author).

by these concepts the reason for intervening is that the lives of large groups of people are threatened, there are great differences in the manner of intervention and in the legal grounds on which such intervention is, or could be, based.²⁷

Humanitarian intervention also differs from intervention based on other aims like the need to protect nationals abroad, to restore democracy or to assist an oppressed people to achieve self-determination. These aims relate to the concepts of rescuing nationals abroad, self-determination and pro-democratic intervention respectively, and will not be discussed here as they fall outside the scope of the present contribution.

Humanitarian intervention should also be distinguished from intervention with the consent of the legitimate government of the target state. It is permissible in international law for a state, in exercise of its sovereignty, to request assistance from another state or group of states.²⁸ Such consent can be given on an *ad hoc* basis or by treaty. The requests in many instances relate to assistance by means of armed forces or the supply of military equipment. The only condition would be that the government that responds to such a request for assistance would have to satisfy itself that its response is proper and will have to accept that its actions will come under close scrutiny by the international community.²⁹

26 ACUNS (2001) Para 4. However, if military force were used to ensure an uninterrupted delivery of food and relief supplies to the non-combatant population, such application of force would constitute humanitarian intervention. See Kwakwa (1994) 15. Although 'humanitarian assistance' is outside the scope of this study, it is felt that the rules on enhancing the co-ordination of UN humanitarian emergency assistance laid down in General Assembly Resolution 46/182 should be further developed into a convention on humanitarian emergency assistance. See GA Res 46/182 of 19 December 1991, entitled 'Strengthening of the Co-ordination of the Humanitarian Emergency Assistance of the United Nations'.

27 See Advisory Council on International Affairs & Advisory Committee on Issues of Public International Law (2000) 6.

28 See Barrie (2000) 89- 90; Barrie (1999) 46; Chigara (2000) 64.

29 Barrie (2000) 94.

A state can by virtue of a treaty consent to intervention. For example, Great Britain, France and Russia guaranteed the independence of Greece and consequently intervened during the First World War to establish constitutional government pursuant to the Treaty of London of 1863.³⁰ A similar treaty is the 1960 Treaty of Guarantee³¹ relating to Cyprus whereby Greece, Turkey and Great Britain reserve the right to take action so as to re-establish the state of affairs created by the Treaty. A right to intervene on the basis of a treaty is at times restricted as to its object and the way it is enforced.³² At other times, however, a treaty will give the right of intervention with a wide scope, although according to Ronzitti, this kind of treaty is rare.³³

Under Article 51 of the UN Charter, individual or collective self-defence of states is permissible. Collective self-defence may be undertaken under the auspices of the UN, or in the framework of regional organisations. Article 52 of the UN Charter provides that nothing precludes regional 'arrangements or agencies' from dealing with matters of regional international peace and security. Thus on the basis of these provisions, individual or collective self-defence is lawful, and it differs from humanitarian intervention. The International Court of Justice accepted in the case concerning *Military and Paramilitary Activities in and Against Nicaragua*³⁴ that self-defence could justify action that would otherwise constitute unlawful intervention.³⁵

An important conceptual distinction relates to 'statutorily authorised' intervention on the one hand and humanitarian intervention under customary international law on the other hand. The UN Security Council may, pursuant to the provisions of Chapter VII of the UN Charter, authorise action (including military action), where it makes a finding that the situation in the target state constitutes 'a threat to

30 Reprinted in (1918) 12 *American Journal of International Law* 312.

31 UK Treaty Series No 5 1961.

32 To give an example, the agreement (no longer in force) between the US and Mexico of 29 July 1882 gave the right of hot pursuit in the other state's territory to catch bands of Indians who were raiding along the border.

33 Ronzitti (1985) 94.

34 ICJ Rep. (1986) 14.

35 See ICJ Rep. (1986) 14. What constitutes self-defence is open to interpretation. For instance, states have attempted to justify the pursuit of fugitives across a frontier as being action in self-defence. The same claim may be made where a state is responding to an act of aggression.

international peace and security'.³⁶ In many of its resolutions authorising the use of force, the Security Council makes reference to 'gross violations of human rights' or 'humanitarian crisis' in the target state, but eventually, the legal basis for the resolutions authorising intervention is that the situation is 'a threat to international peace and security'.³⁷ The connection of the situation in the target state with international peace and security is a requirement of the UN Charter.³⁸

Where the Security Council authorises the use of force against a state, after necessarily finding that the situation in the target state is a threat to international peace and security, the legal basis for such action is clearly provided for and cannot be legally faulted. It is argued that Chapter VII operations explicitly authorised by the Security Council, for a stated aim of addressing breach or likely breach of international peace and security, are lawful. As a matter of doctrine, these operations fall within the realm of 'collective security' or 'peacekeeping' or simply 'enforcement action'. While humanitarian intervention may supplement these concepts, it substantially differs from them. However, this contribution will explore the possibility of intervention under the auspices of the UN Charter, not on the basis of a 'threat to international peace and security' determination by the Security Council but rather on purely humanitarian grounds. This kind of intervention would constitute humanitarian intervention by the UN, as conceptualised in the present discussion.

Statutorily authorised humanitarian intervention is distinguished from humanitarian intervention based on customary international law. In the latter case, what ought to be proved is that there exists a residual law to be found in custom, over and above law deriving from treaty or other form of statute, which allows a state or states to intervene in others where the level of human rights violations shock the conscience of humanity. In order to establish such custom, which must exist independent of treaty provisions, two elements must be satisfied: state practice (*usus*), and the requirement that the state practice must have arisen from the belief by the those states that humanitarian intervention is a requirement of the law, and not of moral, political or ethical propriety.

36 See UN Charter, arts 24 and 39.

37 For instance, UN Security Council Resolution 688 of 1991, relating to Iraqi's invasion of Kuwait, was seen to be legally binding because it referred to the situation in Iraq as 'a threat to the peace'.

38 Under Chapter VII of the UN Charter, the Security Council is authorised to permit measures, including the use of armed force, against any state where the Council finds that there is a situation that threatens international peace and security.

The latter ingredient of customary international law is known as *opinio juris*.³⁹ Humanitarian intervention on the basis of customary international law is in this contribution alternatively referred to as 'unauthorised humanitarian intervention'.

A narrow conceptualisation of 'humanitarian intervention' is preferred here. The term as used in the present means the threat or use of armed force by a state or states in a state which has not consented to such threat or use of force, in order to prevent, limit or end widespread and flagrant violations of fundamental human rights in the target state. This term 'humanitarian intervention' has the following definitional elements:

- It involves the threat or use of armed force by a state or group of states, usually (but not obviously) acting through an intergovernmental organisation.⁴⁰ Non-forcible means such as the recalling of diplomats, economic sanctions, refusal to grant credit and transnational funding to influence the outcome of elections fall outside the purview of humanitarian intervention.
- It is targeted at a sovereign state.
- It may take place with or without the authority of the UN Security Council or regional organisation acting within the competence of their constitutive treaties, but the intervention must be without the consent of the target state.
- It is aimed at preventing, limiting or stopping serious violations of human rights on a large scale in the target state, where the government of that target state is either perpetrating the violations or is unable or unwilling to allow international action to end them.
- It should, in all cases, be based on humanitarian considerations.

There are two types of humanitarian intervention. The first is unilateral intervention (intervention by a single state) and the second is collective intervention (effectuated by a group of states).⁴¹ This study lays more focus on the latter mode of intervention.

39 The *opinio juris* element of customary international law is enshrined in the maxim *opinio juris et necessitatis*.

40 The use of force referred to here entails the actual use of military personnel and military hardware.

41 Kindiki (2001a) 23.

For one, collective humanitarian intervention has been spared most of the criticisms accorded to unilateral intervention.⁴² More important, the study favours an emphasis on collective humanitarian intervention because relatively few states have the capacity to intervene on their own with the necessary combination of skill, surprise, speed and sufficient force to accomplish the aim with minimal collateral damage.⁴³

The Need for Humanitarian Intervention In Africa

In his 1998 report to the Security Council regarding causes and effects of conflicts in Africa, UN Secretary-General Kofi Annan decried that too many instances of 'appalling violations of fundamental rights' were the main obstacles to economic progress on the continent.⁴⁴ Annan was merely restating the concern of the Assembly of Heads of State and Government of the OAU way back in 1993 in its 'Cairo Declaration' when the Assembly noted that:

No single factor has contributed more to the present socio-economic problems in the continent than the scourge of conflicts within and between our countries. They have brought about death and human suffering, engendered hate and divided nations and families. Conflicts have forced millions of our people into a drifting life as refugees and internally displaced persons, deprived of their means of livelihood [and] human dignity....⁴⁵

After reiterating the sentiments of the OAU leaders, Annan went on to underscore that nowhere is a global commitment to prevent gross human rights violations needed more than in Africa, because 'no region of the world has endured greater human suffering.'⁴⁶ In another document in 1999, Annan concluded that time is now ripe for the international community to reach a consensus, not only on the principle that massive and systematic violations of human rights must be checked wherever they take place, but also on ways of deciding what action is necessary, and when, and by whom.⁴⁷

42 *Ibid.*

43 Barrie (1999) 46.

44 United Nations (1998) 13.

45 See, *The Declaration [...] on the Establishment, Within the OAU, of a Mechanism for Conflict Prevention, Management and Resolution* (Decl AHG/Decl.3 XXIX Rev 1 of 29 June 1993, reproduced in (1994) 6 *African Journal of International and Comparative Law* 158; see Para 9 of the Declaration.

46 United Nations (1998) 9.

47 Secretary-General's Speech to the 54th Session of the General Assembly, 20 September 1999, SG/SM/7136 GA/9596, Para 147.

The unending problem of armed conflicts in Africa needs a sustainable solution, if the alluring dream of economic, social and political stability in Africa is to be realised. Conflicts, in particular their resolution, is arguably one of Africa's top priority today. Armed conflicts abound in all corners of the continent, and even where they have abated, conflict-related complications persist. An example in this regard is Rwanda, where the international community should do more than repent about its failures. The dynamics that ignited the genocide in Rwanda today continue to play a role in neighbouring Burundi and the Democratic Republic of Congo (DRC).⁴⁸

The Legal Basis for Humanitarian Intervention

Although the idea of humanitarian intervention is said to have existed since the time of Thomas Aquinas, its status in international law is still a matter of great controversy today.⁴⁹ The main reason is that the current 'World Order' theory is still substantially sustained by the 'the law of nations' and its attendant emphasis on state sovereignty, non-intervention and the non-use of force. Being inherently in contradiction of these normative values, humanitarian intervention is bound to raise, as it has, a legal controversy. The legality of humanitarian intervention has therefore received considerable attention and engendered even more intellectual debate but continues to defy conclusive determination.⁵⁰ The controversy continues to take on greater proportions with the continuous shift of international affairs from the nation-state centred perspective to the one in which the protection of human rights as a matter of international concern is increasingly emphasised.

In this section, we consider the legal basis for humanitarian under the two primary sources of international law: treaties and custom.

48 See, Independent Commission on Kosovo (2000) 15.

49 Fonteyne (1979) 203.

50 Daniel & Musungu (2002) 83.

Humanitarian Intervention and Treaty Law

When considering the legal basis for humanitarian intervention in terms of treaty law, the starting point would be the UN Charter. The Charter is no doubt a law making treaty that creates obligations on both the parties to it and on non-parties.⁵¹ It is true that the UN Charter upholds the doctrine of state sovereignty and its corollary, the concept of non-intervention.⁵² It also prohibits the use of force.⁵³ Thus to some writers, articles 2(4) and 2(7) of the Charter preclude any intervention not expressly provided for under the Charter, and this exclusion applies to humanitarian intervention.⁵⁴ They rightly argue that the Charter also does not expressly provide for the right or duty of humanitarian intervention.

Nevertheless, other commentators have argued that humanitarian intervention can be supported under the UN Charter if the Charter is progressively interpreted. The progressive interpretation rests on the basic argument that humanitarian intervention, apart from seeking to secure respect for human rights, which is a principal purpose of the UN, does not in principle threaten the independence or the territorial integrity of the country concerned.⁵⁵ It is only the use of force that threatens the territorial integrity and political independence of a state that is outlawed under article 2(4) of the Charter. Moore uses this argument to suggest that a threat of widespread loss of human lives would seem to be the clearest justification of humanitarian intervention on the basis of the UN Charter.⁵⁶

51 See art 2 (6) ('The organi[s]ation shall ensure that states which are not members of the [UN] act in accordance with these principles [of the Charter] so far as may be necessary for the maintenance of international peace and security'). For a general discussion on treaties creating obligations and rights for non-parties, that is, law making treaties, see Brownlie (1998) 620-630. Basically, law making treaties are treaties entered to be many state parties, such that they treaty then becomes law *per se*, extending obligations even to non-parties. These may be distinguished from 'treaty contracts', which, having been entered into by relatively few states, impose obligations on state parties only.

52 See, for instance, arts 2 (1) and 2(7) of the UN Charter.

53 Art 2 (4) of the UN Charter.

54 For example, see Charney (1999) 1234 ('The use of force by bombing the territory of another state violates its integrity regardless of the motivation' and "...the phrases 'territorial integrity' and 'inconsistent with the purposes of the Charter' were added to [a]rticle 2(4) to close all potential loopholes rather than to open new ones').

55 See Moore (1969) 205 262; Kufuor (1993) 525 540 ("...It is clearly open to argument that humanitarian intervention does not threaten 'territorial integrity or political independence' [of states]").

56 See Moore (1969) 264.

Concerning the sovereignty and non-intervention principle in article 2(7) of the Charter, an argument is often made that despite the importance attached to sovereignty in the international legal system, developments in the last fifty years have gradually but inevitably changed the original conception of the doctrine.⁵⁷ It is argued that the norm enshrined in article 2(7) has been modified and interpreted in light of developments in international relations.⁵⁸ In relation to this argument, the statement of the PCIJ in the 1923 advisory opinion on the *Nationality Decrees in Tunis and Morocco* is relevant, thus:

The question whether a certain matter is or is not solely within the domestic jurisdiction of a state is an essentially relative question; it depends upon the development of international relations.⁵⁹

Some critics argue that intervention is precluded in cases of grave human rights violations because under article 2(7), these are matters essentially within the jurisdiction of the state concerned.⁶⁰ However, state practice since 1945 seem to have departed from the erstwhile opinion prevailing at the San Francisco Conference in 1945 favouring a broad interpretation of the principle of non-intervention and a corresponding de-emphasis on the right of the UN to intervene in the domestic affairs of states.⁶¹ Both the Security Council and the General Assembly have consistently held that human rights violations within the borders of states are not 'matters which are essentially within the domestic jurisdiction' of such states.⁶² In any case, the international legal concept of 'matters essentially within the domestic jurisdiction' of states is a legal concept whose substance changes as international law develops.

57 Kwakwa (1994) 17.

58 *Ibid.*

59 1923 PCIJ (Series B) No 4 24.

60 For a summary of such views, see Delbuck (1992) 887.

61 Kwakwa (1994) 32.

62. *Ibid.*

Indeed, an important purpose of the UN is to 'save succeeding generations from the scourge of war'⁶³ by 'maintaining international peace and security'.⁶⁴ However, it is also the UN's primary purpose to protect the fundamental rights and freedoms of the individual.⁶⁵ Therefore, interpretation of the Charter should aim at striking a balance between these two purposes. Nowhere does the Charter provide that the one objective supersedes the other.⁶⁶ The argument, therefore, that the protection of human rights is subsidiary to the objective of maintaining international peace and security is untenable. Charney, himself a critic of the view that humanitarian intervention has a legal basis in international law, concedes that contemporary international law prohibits violations of human rights and humanitarian law committed by a state against its citizens.⁶⁷ He writes, and rightly so, that these duties are owed *erga omnes*, to the entire world.⁶⁸

Under articles 55 and 56 of the Charter, member states pledge themselves to take joint and separate action in co-operation with the UN for the promotion of 'equal rights and self-determination of peoples' including 'universal respect for and observance of human rights.' It follows that situations of egregious violations of human rights can warrant unilateral or collective humanitarian intervention, so long as such action is taken in co-operation with the UN. This co-operation can take any form, including necessary lobbying leading to the adoption of a 'uniting for peace' declaration by the UN General Assembly. This way, express authority of the Security Council for use of force may not be required.

63 UN Charter, preamble, para 1.

64 UN Charter, art 1 (1).

65 Under art 1(2) of the UN Charter, protection and promotion of fundamental rights and freedoms of the individual is described as one of the principles of the UN. See also UN Charter, preamble para 1 (We the peoples of the United Nations determined...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women); Art 1 (3) ([t]he purposes of the [UN] are:...to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all...) as read with arts 55, 56, 62 and 68.

66 But see Charney (1999) 1234 ('The protection of human rights is also among the primary sources of the Charter, although subsidiary to the objective of limiting war and the use of force in international relations'); Similarly, see Independent Commission on Kosovo (2000) 168 ('[h]uman rights were given a subordinate and marginal role in the UN system in 1945, a role that was understood to be, at most aspirational. However, there seems to be nothing in the Charter to support these assertions.

67 Charney (1999) 1232.

68 *Ibid.*

The human rights theme in the UN Charter continues in article 68 under which the Economic and Social Council (ECOSOC) of the UN is required 'to set up commissions...for the protection of human rights.' Article 76(c) states that a basic objective of the trusteeship system is 'to encourage respect for human rights and for fundamental freedoms for all'. Under the UN human rights treaties enacted pursuant to the Charter provisions, human rights are now more clearly a justification for action than ever before, and norms are reaching a point at which they can be implemented and enforced.

Ronzitti has argued that if, on the one hand, it can be shown that there is an overall increase in the protection of human rights, on the other hand, it should be noted that none of the instruments for the protection of human rights contemplates the use of force for their enforcement.⁶⁹ This position may be replied to in two ways. In the first place, article 56 calls on member states of the UN to 'take joint and separate action'.⁷⁰ This action is not defined, and may therefore involve forcible means.

In the second place, humanitarian intervention is invariably a response to rare and extreme circumstances involving flagrant and persistent violations of core human rights, the so-called fundamental standards of humanity. Humanitarian intervention does not seek to respond to any other violation of rights, say, the right to associate or to join a trade union. Because of the gravity of the circumstances to which humanitarian intervention responds, the use of force is inevitable, as egregious violations are invariably committed in the context of armed conflict. The defence of human rights by arms in extreme situations is not misplaced in law as such. The protection of peoples against genocide, for instance, is based on their human rights, but a practical response to genocide would necessitate a proportionate armed operation.

69 Ronzitti (1985) 16. For a similar argument, see Independent Commission on Kosovo (2000) 167-168 ('...[T]he Charter provisions relating to human rights were left deliberately vague, and were not intended when written to provide a legal rationale for any kind of enforcement, much less a free-standing mandate for military intervention without [Security Council] approval').

70 See art 56, UN Charter ('All member states pledge themselves to take joint and separate action in cooperation with the organi[s]ation for the achievement of the purposes set forth in article 55').

If humanitarian intervention is understood to be a war in defence of human rights, then such a war is just. Even the rights of states derive from the presumption that the states will protect basic human rights and consequently, wars in defence of human rights are just. Further, any government that fails to provide the most fundamental rights for major segments of its population can be said to have forfeited its sovereignty and the international community can be said to have a duty in those instances to re-establish it.⁷¹ Sovereignty will have collapsed by virtue of that government's incapacity to prevent gross violations of human rights.⁷²

Relevant here is the pronouncement by the ICJ in the case of *Barcelona Traction, Light and Power Co Ltd (Belgium V Spain)* (1970).⁷³ In it, the Court held that there are certain rights in whose protection 'all states can be held to have a legal interest'. According to the Court, the obligations involved here are obligations *erga omnes* (to the entire world). In this connection, one may also refer to the Declaration of the Second World Conference on Human Rights, adopted in Vienna in 1993, which stated that 'the promotion of all human rights is a legitimate concern of the international community'.

On the basis of the above, the conclusion of the Dutch Advisory Council on International Affairs in their joint study with the Advisory Committee on Issues of Public International Law has a strong appeal. It states:

The international duty to protect and promote the rights of individuals and groups has thus developed into a universally valid obligation that is incumbent upon all the states in the international community, both individually and collectively. This duty is having an increasing impact on the development and operation of international law, which originally had a largely inter-state character and was designed to serve *raison d'état*. It is therefore desirable that, as part of the doctrine of state responsibility, efforts be made to further develop a justificatory ground for humanitarian intervention without Security Council mandate.⁷⁴

71 Newman & Weissbrodt (1996) 223.

72 *Ibid.*

73 ICJ Rep 1970 53 para 33.

74 See Advisory Council on International Affairs & Advisory Committee on Issues of Public International Law (2000) 24.

Having considered the relevant provisions of the UN Charter, as well as the views of various writers regarding the interpretation of those provisions, a preliminary conclusion is arrived here that on a progressive interpretation of the Charter, humanitarian intervention may be defended in extreme and rare circumstances of gross human rights atrocities. In legal terms, it cannot be logically argued that the human rights-related provisions of the Charter, coupled with the numerous human rights treaties that have been adopted since 1945 can be ignored in favour of sacrosanct principles of state sovereignty and non-use of force.

Although it would be practically impossible for political reasons to invoke humanitarian intervention on the basis of the Charter, potentially, a case can be made that the Charter does not preclude humanitarian intervention. If the Charter does not expressly provide for humanitarian intervention, then it is also arguable that the same Charter does not specifically outlaw humanitarian intervention. With this in mind, then argument will turn on the understanding of the interpretation of articles 2(7) and 2(4) of the Charter vis-à-vis the rest of the provisions of the Charter, especially the provisions relating to human rights and those of human rights treaties adopted under the auspices of the UN since 1945.

The above possibilities of invoking humanitarian intervention under the UN Charter are based on the presumption that the Security Council would authorise the intervention purely on humanitarian grounds, without necessarily finding that the situation at hand is a 'threat to international peace and security'. However, this would bring technical problems since all Security Council operations concerning the use of force must, according to article 24 of the Charter, be based on a finding that the situation concerned is a 'threat to international peace and security'.

Apart from the Security Council, the General Assembly can be involved, by invoking the Uniting for Peace Resolution of 1950.⁷⁵ The text of this resolution provides that where the Security Council, because of its lack of unanimity of the permanent members, fails to exercise its primary responsibility in any case where there appears to be a threat to or breach of the peace, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to UN member states, including the use of armed force where necessary. [Emphasis added]. Here, the 'international peace and security' link need not necessarily be made.⁷⁶

⁷⁵ See *The Uniting for Peace Resolution*, Res 377 (V) of 3 November 1950.

⁷⁶ Although the Resolution mentions that the matter should relate to the 'maintenance of international peace and security', the Charter does not require the General Assembly to always determine that a matter is a threat to international peace and security before discussing it.

If at the time in question the General Assembly is not in session, the General Assembly may be convened within 24 hours, either at the request of a majority of UN members or at the request of at least nine members of the Security Council. Since this is a procedural matter, the right of veto does not apply.⁷⁷ The involvement of the General Assembly in the manner described here is a logical step in view of both the secondary responsibility of this principal UN body for the maintenance of international peace and security (alongside the primary responsibility of the Security Council) and the General Assembly's repeated involvement in efforts to protect human rights in the past.⁷⁸

Besides the UN Charter, a treaty law basis for humanitarian intervention can be found in the Convention on the Punishment and Prevention of the Crime of Genocide (the 'Genocide Convention').⁷⁹ The Convention obliges state parties to 'prevent and punish' genocide, which the Convention describes as an offence against international law, even when the genocide is directed by a state against its own citizens.⁸⁰ It follows that in cases where internal armed conflicts involve the commission of genocidal acts or intent, unilateral or collective humanitarian intervention may be legally justified on the basis of the Genocide Convention.

The Convention defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group:⁸¹

- Killing members of the group.
- Causing serious bodily harm or mental harm to members of the group.
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

77 The veto power operates only in non-procedural matters. See art 17 and 18 of the UN Charter.

78 Advisory Council on International Affairs & Advisory Committee on Issues of Public International Law (2000) 26.

79 Adopted by UNGA Res 260 (III) A on 9 December 1948, 78 UNTS 1021 (1951).

80 Art 1.

81 Art 2.

- Imposing measures intended to prevent births within the group.
- Forcibly transferring children of the group to another group.

In Africa where many of the conflicts are ethnic in nature, a strong *prima facie* case could be made against the state concerned under several of the above headings within article 2 of the Genocide Convention. However, in interventions where the right or duty of humanitarian intervention is claimed, the intervening states seldom invoke the Convention.⁸²

Ronzitti, has faulted reliance on the Genocide Convention to support the legality of humanitarian intervention in international law.⁸³ The basis of his contention is that under article 1 of the Convention, states are obliged to punish genocide within their own territories, and not within the territories of other states. He argues that in cases where a state does not punish genocide within its own territory, other states are not authorised to intervene by using force, but can only refer the matter to the competent organs of the UN so that they may take such action under the UN Charter, as they consider appropriate.⁸⁴

While the above may be true, it is arguable that states do not have much choice when it comes to punishing genocide. The duty to prosecute genocide, which is an international crime is owed *erga omnes*, and those accused of genocide may be punished by any state, not just by the state where the crime is committed.⁸⁵ Commission of genocide renders one *hostis humanis generis*, that is, an enemy of all man-kind.⁸⁶

82 See for instance, Mortimer (1998) 120 (arguing that a strong case could have been made against Iraq for acts of genocide against the Kurds in 1991. However, none of the intervening states invoked the Genocide Convention).

83 Ronzitti (1985) 17 ('It is absolutely useless to refer to article I of the Genocide Convention').

84 This argument is based on the provisions of art 8 of the Genocide Convention.

85 See Kindiki (2001b) 64 72. See also Orentlicher (1991) 2537 2552 ('The term 'international crimes' in its broadest sense comprises offences which conventional or customary international law either authorises or requires states to criminalise, prosecute and punish').

86 Kindiki (2001b) 72.

Where a state is for one reason unable or unwilling to prevent or punish genocide, that responsibility shifts to the other states constituting the international community, who have a legal interest in the prevention and punishment of the crime of genocide. This reasoning can be supported by employing the intent of the framers of the genocide convention, and is further buttressed by the customary international law principle very much applicable to the issue of genocide, encapsulated in the maxim *aut dedere aut judicare* (prosecute or surrender for prosecution).

Briefly, this principle requires states, in the event of being unable or unwilling to prosecute a person suspected of committing an international crime such as genocide, to surrender that person to the authorities of another state or an international tribunal for prosecution. This is an extension of the doctrine of universal jurisdiction over international crimes. The customary law foundation of the *aut dedere aut judicare* doctrine brings us to an examination of the place of humanitarian intervention in customary international law.

Humanitarian Intervention and Customary International Law

The customary practice of nations is the oldest source of international law. In the absence of an international executive and legislature, custom has exercised an influential role in the formation of international law. Custom ought to be distinguished from mere usage, such as behaviour that may be done out of courtesy, friendship or convenience rather than out of a sense of legal obligation. Thus a rule of customary international law must meet two broad criteria:⁸⁷

- There must be state practice supporting the existence of the rule (*usus*).
- A belief among states that the rule is legally binding, the *opinio juris et necessitates* doctrine, must be evident in the state practice.

An assessment of the validity of humanitarian intervention must be predicted on these two criteria.

87 Brownlie (1998) 4-7.

State Practice (Usus)

One of the earliest known instances akin to humanitarian intervention occurred in 480 B.C. The Prince of Syracuse, after defeating the Carthaginians, laid down as one of the conditions of peace that they refrain from the barbarous custom of sacrificing their children to Saturn.⁸⁸ In modern times, there have been various instances of humanitarian intervention especially during the past two centuries.⁸⁹ The most noteworthy precedents concern the interference by European powers in the affairs of the Ottoman Empire. The following are the commonly quoted pre- 1945 examples: The intervention of France, Russia and the UK against the Ottoman Empire (1827-1830); Russian intervention at the time of the uprisings in Bosnia, Herzegovina and Bulgaria (1877- 1878); and the collective intervention in Macedonia in 1903.

In the 1827 intervention in the Ottoman Empire, the three powers, France, Russia and the United Kingdom intervened to protect the Greek Christians from the oppressive rule of the Turks, following a number of massacres.⁹⁰ As transpires from the preamble to the London Treaty of 6 July 1827, the three powers invoked humanitarian motives, *inter alia*.⁹¹ The outcome of that intervention was the independence of Greece, which had arisen against the Ottoman Empire and whose population had been the victims of bloody repression.⁹²

Another instance is the Syrian intervention (1860- 1861), which is generally regarded as a good precedent even by those who hold that humanitarian intervention is illegal.⁹³ Syria, which was part of the Ottoman Empire from the sixteenth century until World War I, was invaded by the armed forces of France, acting with concert of Europe, then comprising Austria, Britain, Prussia, and Russia. The intervention was also authorised by Turkey.⁹⁴ The stated aim of the intervention was to end the persecution of Maronite Christians by the Muslim population.⁹⁵ The French intervention stands out as a good precedent for state practice concerning humanitarian intervention.

88 Abiew (1999) 49.

89 For a full analysis of state practice concerning humanitarian intervention, see generally, Ronzitti (1985).

90 Abiew (1999) 44. According to Barrie (2000) 102, these powers intervened in the struggle between Greece and Turkey 'after public opinion was horrified by the cruelties committed in that struggle'.

91 Ronzitti (1985) 90.

92 Stowell (1921) 126-127; Cf Ronzitti (1985) 90.

93 Brownlie (1963) 339-340.

94 See Ronzitti (1985) 90.

95 Abiew (1999) 49.

The intervention in Turkey originally by Austria, Hungary and Russia and later by Greece, Bulgaria and Serbia (1903-1912) constitutes a relevant precedent. According to the justification given by Greece, these states resorted to force in order to put an end to the alleged mistreatment of the Christian populations in Macedonia.⁹⁶ In an attempt to convert the Christian population in Macedonia, Turkish troops had reportedly committed atrocities by attacking the civilian population and destroying villages.⁹⁷ The intervention culminated in the 1913 Treaty of London where Turkey ceded the greater part of Macedonia for partition among the Balkan allies.⁹⁸

Apart from cases of intervention by European powers in the Ottoman Empire whose value as precedents is not absolute, there are a few instances of application of humanitarian intervention to be found in the relations of the so-called 'civilised nations' during the period being examined.⁹⁹ The policy of intercession against Russia by the United Kingdom, France and Austria in 1863 because of the repression carried out in Poland constitutes a dubious precedent, since it is not clear whether there was a real threat of the use of force.¹⁰⁰

After entry into force of the Covenant of the League of Nations and of the Kellogg-Briandt Pact in 1919 and 1928 respectively, states practically never resorted again to the theory of humanitarian intervention to justify the use of force.¹⁰¹ The only exception is the reason given by Germany for its occupation of Bohemia and Moravia in 1939 and for setting up a protectorate over them.¹⁰² In the proclamation made by Hitler on 15 March 1939, he stated that 'wild excesses' were taking place in

96 Ronzitti (1985) 91.

97 Abiew (1999) 49; see also Ezejiolor & Quashigah (1993) 36 42.

98 Abiew (1999) 50.

99 Ronzitti (1985) 91. Cf Franck & Rodley (1973) 281 who argue that these principles in which 'civilised' states exercise *de facto* tutorial rights over 'uncivilised' ones are of little precedential value in the contemporary world.

100 Stowell (1921) 89 ff. Ronzitti (1985) 91.

101 Ronzitti (1985) 91. But see Brownlie (1963) 341-342 where the author argues that neither the Kellogg-Briandt Pact nor the Charter of the UN (and by extension the Covenant of the League of Nations) expressly condemned the institution of humanitarian intervention.

102 Ronzitti (1985) 91.

Czechoslovakia to the detriment of the population of German origin.¹⁰³ As stated in the proclamation, the action was further aimed at removing this 'threat to peace' once and for all and at laying the foundations 'for the necessary reorgani[s]ation' of a 'vital area' for Germany.¹⁰⁴

Even with the entry into force of the UN Charter in 1945, claims of states concerning the lawfulness of humanitarian intervention continued. The following five instances are often quoted as situations where force has been used for humanitarian purposes: The Congo intervention of 1964; the Dominican intervention of 1965; the East Pakistani intervention of 1971; Vietnam's intervention in Cambodia (Kampuchea) in 1978; and the Tanzanian intervention in Uganda in 1979. Only the last three instances have received the widest acceptance as instances of genuine humanitarian intervention. Each of these five instances will be discussed briefly.

The intervention in Congo by Belgium in 1964 occurred when insurgents fighting the Congolese government took over two thousand foreign residents as hostages in Stanley Ville (now Kinshasa) and Paulis, with the objective of extracting certain concessions from the central government.¹⁰⁵ When the government rejected their demands, the insurgents killed 45 of the hostages and threatened further executions. Belgian forces with the aid of US airplanes and using British military facilities intervened in the Congo and evacuated the endangered persons on a rescue mission that lasted four days.¹⁰⁶ Although the Congo intervention is often quoted as an instance of humanitarian intervention, the facts suggests it was more of an instance of rescuing nationals abroad.¹⁰⁷

The humanitarian motivation of the intervention can be seen in the statement from the US Department of state, which read as follows:¹⁰⁸

103 *Ibid.*

104 *Ibid.*

105 Lillich (1967) 339.

106 *Ibid.*

107 Most of the hostages were foreign nationals from the three intervening states, and they were evacuated mainly on grounds of their nationality. See Abiew (1999) 104 ('...even as the operation went on-with the rescue of the white foreign residents-innocent blacks were being killed in the process, which smacked of racism).

108 US Department of State Bulletin (1965), quoted in Lillich (1967)340.

This operation is humanitarian, not military. It is designed to avoid bloodshed-not to engage the rebel cases in bloodshed. Its purpose is to accomplish its purpose quickly and withdraw-not to seize or hold territory... They will depart from the scene as soon as their evacuation mission is accomplished.

The events preceding and following the Dominican Republic intervention seem to be much more complicated than the Congo situation.¹⁰⁹ Briefly, an interim military government, which ousted the constitutional government of President Bosch in 1963, was subsequently challenged by a revolt on 24 April 1965.¹¹⁰ As a result, civil strife erupted which left the Republic without an effective government, followed by a breakdown of law and order.¹¹¹ On 28 April 1965, US marines landed in Santo Domingo in what appears to be the protection of US nationals and those of other countries in the wake of the unfolding events.¹¹²

On 3 December 1971, following Pakistan's attack on airfields in western India, Indian forces launched an integrated ground, air and naval offensive in East Pakistan in the Bengali area.¹¹³ India's justification of the intervention was that the people of East Pakistan had sought 'assistance to receive freedom' and that the intervention also aimed at halting 'the genocide [which was] being perpetrated by the Western Pakistani troops against the Bengalis'.¹¹⁴ The Indian intervention in East Pakistan resulted in the creation of the independent state of Bangladesh. Many writers have cited the instance as the archetypal example of circumstances justifying humanitarian intervention.¹¹⁵

109 Abiew (1999) 108.

110 Abiew (1999) 108.

111 Abiew (1999) 108.

112 Abiew (1999) 108.

113 Tanca (1993) 164; cf Franck & Rodley (1967) 275.

114 Tanca (1993) 167.

115 See, for instance, Ronzitti (1985) 95 ('Indian intervention in East Pakistan is usually quoted as a very significant precedent by writers who declare themselves in favour of the lawfulness of humanitarian intervention').

Teson, for instance, characterises the Indian intervention in Pakistan as a clear instance of humanitarian intervention. He sees the intervention partly, as one of rendering foreign assistance to a people struggling for their right to self-determination- a collective human right, and partly as intervention with the objective of ending acts of genocide, that is humanitarian intervention proper.¹¹⁶ With regard to this intervention, Fonteyne declares that '...the Bangladesh situation probably constitutes the clearest case of forcible humanitarian intervention in [the twentieth] century.'¹¹⁷ India itself did invoke humanitarian reasons for the action in Pakistan. In a statement to the UN General Assembly, India's representative said:

The reaction of the people of India to the massive killing of unarmed people by military force has been intense and sustained...There is intense sorrow and shock and horror at the reign of terror that has been let loose. The common bonds of race, religion, culture, history and geography of the people of East Pakistan with the neighbouring Indian state of West Bengal contribute powerfully to the feelings of the Indian people:¹¹⁸

In 1978, there were clashes along the Cambodia (Kampuchea)-Vietnam border.¹¹⁹ After a spate of counter accusations, Vietnam intervened militarily and overthrew the Khmer Rouge regime of Pol Pot, which Vietnam accused of having 'genocidal policies'. Within three years of assuming power, the Khmer Rouge regime had, through its 'reorganisation programme,' perpetrated massive human rights violations against the Cambodian citizens. During that period, an estimated two million people, out of a total population of seven million were reported dead as a result of starvation, disease and slaughter.¹²⁰

116 See Teson (2nd ed) (1997) 206-207.

117 Fonteyne (1979) 204. But cf Frank & Rodley (1973) 275 276 ('[T]he Bangladesh case...does not constitute the basis for a definable, workable, or desirable new rule of law which, in the future, would make certain kinds of unilateral military interventions permissible').

118 See UN GAOR 2002th, UN Doc A/PV 2002 (1971) 14.

119 See Kindiki (2001a) 26.

120 Ronzitti (1985) 98.

Vietnam eventually used force, because the UN failed to do anything but pass resolutions. Although the justification given by Vietnam's intervention was given in somewhat contradictory terms, a possible basis for justifying this intervention on humanitarian grounds was the existence of large-scale atrocities.¹²¹ The international community's mixed reaction to this case did not constitute a negation of the doctrine of humanitarian intervention since cold war rivalries shaped opinion either in support or against the intervention.¹²²

The brutal dictatorship of President Idi Amin came to an end in April 1979, with his overthrow by Ugandan rebels aided by Tanzanian army units.¹²³ Relations between the two countries had soured due to cross-border incursions that culminated in the occupation, by Uganda, of a 710 square mile strip of Tanzania territory north of the Kagera river.¹²⁴ Tanzania's invasion was explained in somewhat confusing terms,¹²⁵ but a reference was made to the gross violation of human rights perpetuated by Amin's government.¹²⁶

At the commencement of the conflict Tanzania grounded its intervention as a reaction to the aggression against it at the end of October 1978, pointing specifically to the occupation of the Kagera salient.¹²⁷ Considering the lack of goodwill between Tanzania and Uganda at the time, it is not difficult to imagine that other objectives were on the Tanzanian agenda during the conflict.¹²⁸ Whilst it may be moot whether or not

121 Abiew (1999) 130.

122 See Abiew (1999) 128-129 ('In the Security Council, the Soviet Union, Cuba, Czechoslovakia, the German Democratic Republic, Hungary, Mongolia, Poland and Bulgaria supported the Vietnamese position... Other members of the Security Council challenged these representations. China did not comment... The non-Aligned countries held Vietnam responsible for violating Kampuchea's territorial integrity').

123 Abiew (1999) 120-121. Amin's rule had reportedly perpetuated executions, rape, torture and arbitrary arrests.

124 For a discussion on relations between Uganda and Tanzania at the time of the intervention, see Umozurike (1982) 301.

125 Tanca (1993) 174-175.

126 See Government of the United Republic of Tanzania (1979), generally.

127 Ronzitti (1985) 102.

128 Abiew (1999) 122.

Tanzania did specifically invoke the doctrine of humanitarian intervention, it is important to note that Tanzania did not seek any territorial aggrandisement. As Abiew suggests, even if its objective was to remove Amin from power, that aim by itself is not inconsistent with the doctrine of humanitarian intervention.¹²⁹

The international community expressed relief regarding the overthrow of Amin. Strong support for Tanzania's action was received from the US, the UK, Zambia, Ethiopia, Angola, Botswana, Gambia and Mozambique.¹³⁰ Rwanda, Guinea, Malawi, Canada, and Australia quickly recognised the new government under Yusuf Lule.¹³¹ Kenya remained neutral initially but later offered its cooperation to the new Ugandan government.¹³² At the 1979 OAU Summit, almost all African states except Sudan and Nigeria remained silent on the issue.

After the capture of Kampala, the Tanzania foreign minister intimated at the humanitarian basis of the intervention by saying that the fall of Amin was a 'tremendous victory for the people of Uganda and a singular triumph for freedom, justice and human dignity'.¹³³ Humanitarian considerations offer a more cogent explanation for the Tanzanian intervention in Uganda, as a response to egregious violation of human rights by Amin's regime. As Teson comments, the widespread feeling that the human rights cause had been served made the international community to refrain from criticising the Tanzanian intervention.¹³⁴

The 1990's witnessed changes in the international system so profound that they would have been unimaginable several decades ago.¹³⁵ The demise of the Cold War, the disintegration of the Soviet Union, and the events that surrounded the Persian Gulf War changed perceptions of the behaviour of states and international institutions in the global arena.¹³⁶ However, the euphoria generated in the aftermath of the Gulf

129 Abiew (1999) 123.

130 Abiew (1999) 123.

131 Ronzitti (1985) 105.

132 Teson (1997) 165.

133 Ronzitti (1985) 103.

134 Teson (1997) 167.

135 *Ibid.*

136 *Ibid.*

War and the promise of a new world order¹³⁷ based on the rule of law—a system in which the world would become a safer and more peaceful place—gave way to the stark reality of the phenomenon of intra-state conflicts, and the consequent violence and trans-border refugee flows they engender, which jeopardise the nation-state system and global stability.¹³⁸ One of the mechanisms employed by nations in dealing with the above crises has been the use of collective military interventions. In particular, force has been used notably in Iraq, Somalia, Bosnia (in the former Yugoslavia), Rwanda, Haiti and Kosovo.

The repression of the Kurdish people of Iraq predates the 1991 Gulf War and its aftermath.¹³⁹ After the dissolution of the Ottoman Empire at the end of World War I, the Treaty of Sevres (1920) provided the Kurds with the prospect of an independent Kurdish state.¹⁴⁰ The provisions of this Treaty were never implemented, and were ignored in the Treaty of Lausanne of 1923, which divided the Kurdish territory between Iran and Iraq.¹⁴¹ Successive Kurdish revolts against Baghdad were ruthlessly crushed, and the oppression intensified in the aftermath of the Gulf War in February 1991.

The magnitude of Iraq's repression of its Kurdish population and the mass exodus of refugees into Turkey and Iran goaded the UN Security Council into action and decidedly placed strains on the policy of non-intervention in the internal affairs of states.¹⁴² Through Resolution 688 of 1991, the Security Council condemned Iraq's repression as a threat to international peace and security, demanded that Iraq end the repression, and insisted that Iraq allows immediate access by international humanitarian organisations to those in need of assistance in all parts of Iraq.

137 See Henrickson (1992) 63.

138 Abiew (1999) 137-138.

139 Abiew (1999) 145. The Kurds are found in different proportions in Turkey, Iran, Iraq and Syria.

140 Abiew (1999) 145.

141 *Ibid.*

142 Barrie (2001) 157.

Intervention in Iraq to protect the Kurds was undertaken by troops from the US, Britain, France, and other countries, and was known as 'Operation Provide Comfort'.¹⁴³ Britain, France and the US declared a 'no-fly zone' in the northern Iraq and 'Operation Southern Watch' in southern Iran.¹⁴⁴ The UN intervention in northern Iraq brought the state sovereignty debate to the fore, and is cited by some as an instance of humanitarian intervention. However, that the Security Council *vide* Resolution 688 of 1991 found the situation in Iraq to be a 'threat to international peace and security' forms the legal foundation of the intervention. Despite the human rights motivations of the intervention, this instance falls in the closely related realm of collective security, and cannot be termed as humanitarian intervention.

The international response to the tragedy in Somalia was a more complex undertaking than the intervention in northern Iraq since Somalia had no functioning government.¹⁴⁵ Events in Somalia have clearly established that ethnic homogeneity is no guarantee of stability.¹⁴⁶ Although Somalia is the most ethnically homogenous country in Africa, it has been in a state of civil strife since 1990, and throughout this period the country has gone through the most traumatic experience suffered by any independent African country.¹⁴⁷ The Somali tragedy is traceable to the dictatorial policies of the regime of Siad Barre in the 1970s and 1980s. The suppression of critics, detention and military reprisals against his opponents, manipulation of clan interests and rivalries, and the occasional buying-out of opposition groups with cash sustained Barre's hold on power.¹⁴⁸

The end of the Cold War diminished superpower influence in Somalia, and resulted in bitter inter-clan fighting that destabilised the Horn of Africa.¹⁴⁹ The 21-year old dictatorship of Siad Barre came to an end in January 1991 and created a power vacuum in the country.¹⁵⁰ Barre's ouster resulted in anarchy, looting, pillaging and

143 *Ibid.*

144 *Ibid.*

145 Abiew (1999) 158.

146 Kwakwa (1994) 27.

147 *Ibid.*

148 Abiew (1999) 160.

149 Abiew (1999) 161.

150 *Ibid.*

rape of women.¹⁵¹ Given this grim situation, the UN Security Council adopted Resolution 733 of 1992, directing the Secretary-General to undertake necessary action to increase humanitarian assistance to the people of Somalia.¹⁵²

In March 1992, the major factions in the civil conflict agreed to a UN-mediated ceasefire, which led to the establishment in April of the UN Operations in Somalia (UNOSOM I).¹⁵³ UNOSOM I had a mandate to restore peace and support humanitarian relief operations. Despite the truce, the situation continued to deteriorate, and this led to Security Council Resolution 794 of 3 December 1992.¹⁵⁴ This Resolution went beyond a mere insistence on providing access to humanitarian assistance. The Council recognised the 'unique' situation in Somalia and declared that it fell under Chapter VII of the Charter.¹⁵⁵ Member states of the UN were authorised to use all necessary means to create a secure environment for the delivery of humanitarian assistance.¹⁵⁶

The above determination by the Security Council resulted in the establishment of the US-led Unified Task Force (UNITAF), which was to create a secure environment for the delivery of food and medicine to the people of Somalia.¹⁵⁷ UNITAF was largely successful. Resolution 814 of 1993 established UNOSOM II to complete the work of UNITAF. In particular, UNOSOM II was mandated to use all necessary means, including force, to restore peace, stability and order in Somalia. In June 1993,

151 Knight & Gebremariam (1995) 2.

152 See UN Doc S/Res/733 (1992).

153 The ceasefire involved General Farah Aideed of the United Somali Congress and the interim President Ali Mahdi Mohamed.

154 UN Doc S/Res/794 (1992).

155 Abiew (1999) 163.

156 Further, the Resolution noted that impediments to humanitarian relief violated international humanitarian law. It stated that the people of Somalia had a right to receive assistance from the international community, and that anyone interfering with humanitarian assistance would be held responsible for such acts.

157 Establishment of UNTAF marked the beginning of 'Operation Restore Hope', characterised by extensive operations of NGOs in delivering food and medical care in Somalia.

24 members of the Pakistani UN peacekeeping force and in October 1993 12 US soldiers were killed, 75 were wounded and 6 were missing in action.¹⁵⁸ The US, France, Italy and other western nations pulled out of Somalia, leading to the crumbling of UNOSOM II.

The tragedy in Somalia presented a real opportunity for humanitarian intervention. As the international community was confronted with media images of starving men, women and children, which had replaced pictures of wicked gunmen fighting each other, public opinion was swayed in favour of taking some kind of action.¹⁵⁹

Like the Iraq case, the human rights and humanitarian concerns in the various Security Council resolutions is clear. Resolution 733 of 1992 particularly emphasised the 'grave concern' of the Council at the 'deterioration of the situation in Somalia' including 'heavy loss of human life' and the attendant consequences on the stability of the region.¹⁶⁰ Despite this focus, the 'international peace and security link' in the resolutions formed the legal basis. This instance therefore does not constitute state practice in humanitarian intervention.

International intervention in Bosnia in the mid 1990s closely followed the Somalia 'debacle'. The death of President Marshal Tito of Yugoslavia in 1980 led to cracks within the Yugoslav Republic.¹⁶¹ The post-Tito period led to the rearrangement of the governmental structure that was designed to balance competing ethnic groups and interests.¹⁶² The fall of communism coupled with an increased Serb nationalism led to a couple of states forming the Yugoslav Federation declaring their independence from the Belgrade Government. The declaration of independence by Slovenia and Croatia in 1991 led to other states in the federation pressing for secession. The result was an outbreak of warfare in all the states forming the federation, including Bosnia-Herzegovina.

158 Barrie (2001) 158.

159 Abiew (1999) 168.

160 S/RES/733 (1992).

161 Abiew (1999) 175.

162 Abiew (1999) 175. This balancing was done by rotating the presidency among the six republics that made up the Former Yugoslavia, namely Slovenia, Croatia, Serbia, Bosnia-Herzegovina, Montenegro and Macedonia. In addition the Former Yugoslavia consisted of two 'autonomous' regions-Kosovo and Vojvodina.

The outbreak of civil unrest in Bosnia-Herzegovina in 1991 was inevitable, due to the unstable ethnic mix in the region.¹⁶³ The Serbian population in the region boycotted a referendum held in 1992, and the scene was set for ethnic cleansing, genocide and forced evacuations described by some commentators as 'comparable to those committed by the Nazis during World War II'. Nevertheless, Bosnia declared independence on 3 March 1993. In response to the unending atrocities, the UN Security Council passed Resolution 713 of 1991, which expressed concern that the continuation of the war constituted a threat to international peace and security.¹⁶⁴ Through Resolution 743 of 21 February 1992, the Council established the UN Protection Force (UNPROFOR), whose mandate was to consolidate the cease-fire, load then in effect, and to facilitate the negotiation of a comprehensive settlement.¹⁶⁵

Despite these resolutions, the situation deteriorated and the Security Council passed Resolution 752 of 1992, calling on parties to stop fighting.¹⁶⁶ This was followed by Resolution 757 of 1992, calling for economic sanctions against Serbia whose forces had taken control of large portions of Bosnia-Herzegovina's territory.¹⁶⁷ By Resolution 770 of 1992, the Council determined the situation in Bosnia as a threat to international peace and security and authorised states to use all necessary measures to facilitate the delivery of humanitarian assistance in Bosnia-Herzegovina.¹⁶⁸

Faced with the failure of several attempts at protecting the Bosnian Muslims, the Security Council passed Resolution 781 of 1992, which directed the imposition of a 'no-fly zone' over Bosnia to prevent Serbian attacks from hindering the delivery of humanitarian relief supplies.¹⁶⁹ As it turned out that the 'no-fly zones' became anything

163 In 1991, Bosnia's population was estimated at 4 364 000, of which 43.7% were Muslims, 31.3 Serb and 17.2% Croat. See Abiew (1999) 176.

164 See UN Doc S/Res/713 (1991).

165 Abiew (1999) 180. UNPROFOR was created after a recommendation by the UN Secretary-General. See UN Doc S/Res/ 743 (1992); and Economides & Taylor (1996) 62.

166 UN Doc S/Res/752 (1992).

167 UN Doc S/Res/757 (1992).

168 UN Doc S/Res/ 770 (1992). Through the Resolution, the Security Council expressed 'deep concern' over reports of human rights atrocities especially those committed in prisons and detention camps. The Resolution also expanded UNPROFOR's mandate.

169 UN Doc S/Res/770 (1992).

but safe, the Council, under Resolution 816, authorised member states to take all necessary measures in the airspace of the Republic of Bosnia and Herzegovina in the event of further violations to ensure compliance with the ban on flights.¹⁷⁰ Despite the steps taken by the Security Council, the brutalities continued, culminating in the massacre at Srebrenica in July 1995.

Acting under authority of these resolutions, the Northern Atlantic Treaty Organisation (NATO) fighter jets embarked on a series of bombing campaigns against Bosnian Serb positions that violated the 'safe-havens' designated by the UN to deter further attacks.¹⁷¹ NATO's use of force may have ended the commission of further atrocities and facilitated more realistic proposals towards ending the war.¹⁷² In November 1995, agreements known as the Dayton Peace Accords were signed, bringing the war in Bosnia to an end.¹⁷³ Actions taken subsequently to the above Security Council Resolutions placed more emphasis on the delivery of humanitarian assistance than the need to protect those in need.¹⁷⁴ Nevertheless, humanitarian considerations played a prominent role in getting international response to the conflict situation.¹⁷⁵ The 'international peace and security' determination by the Security Council formed the legal foundation of this intervention. Therefore, the intervention in the former Yugoslavia is not an instance of humanitarian intervention.

The 1994 Rwandan genocide presented another splendid opportunity for humanitarian intervention, although whether or not the opportunity was utilised remains to be seen in the discussion that follows. Fighting broke out on 6 April shortly after President Juvenal Habyarimana was killed in a plane crash near Kigali airport. The wave of terror unleashed resulted in the most brutal and systematic slaughter of civilians ever witnessed on the African continent.¹⁷⁶ In the wake of the tragedy, the Uganda-based rebel group, the Rwandan Patriotic Front (RPF) launched a fresh offensive, took over Kigali and unilaterally declared a cease-fire.¹⁷⁷

170 UN Doc S/Res/816 (1992).

171 Abiew (1999) 181.

172 Abiew (1999) 181.

173 For a discussion on the Dayton Agreements, see Gaeta (1996), generally.

174 Barrie (2001) 160..

175 Weiss (1994) 1.

176 See UN Doc E/CN.4/1994/7 (1994).

177 Abiew (1999) 192.

178 Barrie (2001) 160.

The initial international response to this humanitarian crisis of unprecedented magnitude was muted, to say the least.¹⁷⁸ By Resolution 912 of 21 April 1994, the UN Security Council suddenly reduced the number of UN Assistance Mission to Rwanda (UNAMIR) troops in the wake of murders of members of the troops.¹⁷⁹ However, the Security Council later enhanced the UNAMIR's capacity through Resolution 918 of 17 May 1994, increasing the troops to 5 500 and calling, *inter alia*, for the creation of secure humanitarian areas and for support for humanitarian relief operations.¹⁸⁰ The support sought by the Security Council under Resolution 918 was not forthcoming, as no UN member states made commitments to provide the requisite number of troops.¹⁸¹

France consequently unilaterally undertook a UN-authorized intervention, 'Operation Turquoise', under Security Council Resolution 929 of 1994, and set up a security zone in south-western Rwanda.¹⁸² The French troops later withdrew, handing over control of the security zone to a UN peacekeeping force (UNAMIR II), which largely failed to suppress the genocide.¹⁸³ Operation Turquoise nevertheless served a significant humanitarian purpose, by providing security and logistical support to humanitarian assistance operations both within Rwanda and in the refugee camps in Zaire. Again, UN authorisation in this instance was based on Chapter VII of the Security Council, which had determined the situation in Rwanda as 'a threat to international peace and security'.

The case of Haiti, although distinct in many aspects from the earlier cases examined, shares with them the ingredient of massive human rights violations.¹⁸⁴ The ouster of President Jean-Bertrand Aristide in a military coup in September 1991 and subsequent human rights violations by the military rulers precipitated the crisis.¹⁸⁵ Aristide was Haiti's first democratically elected president after nearly two decades of dictatorial rule.¹⁸⁶

179 See UN Doc S/Res/912 (1994).

180 See UN Doc S/Res/918 (1994).

181 Barrie (2001) 160.

182 See UN Doc S/Res/929 (1994).

183 Barrie (2001) 160.

184 Abiew (1999) 212.

185 Abiew (1999) 212-213.

186 Haiti has had a long tradition of dictatorial regimes since its independence in 1804.

The immediate international response came from the Organisation of American States (OAS) Foreign Ministers, who adopted a strongly worded resolution demanding the full restoration of the rule of law and the immediate reinstatement of President Aristide.¹⁸⁷ The initial UN Security Council response to the coup was to consider it as a domestic jurisdiction issue.¹⁸⁸ However, the UN General Assembly went on to condemn the illegal replacement of Aristide.¹⁸⁹

Invoking Chapter VII of the UN Charter, the Security Council unanimously adopted Resolution 841 in June 1993, imposing wide-ranging sanctions on Haiti.¹⁹⁰ In July of the same year, a UN-brokered accord known as the Governors Island Agreement was reached. By Resolution 940 of July 1994, the Security Council authorised member states to form a multinational force and to use all necessary means to facilitate the departure from Haiti of the military leadership.¹⁹¹ This was followed by US warships being positioned off the Haitian coast, and a subsequent settlement that saw the reinstatement of Aristide.

The US-led Multinational Force in Haiti (MNF) was replaced with the UN Mission in Haiti (UNMIH) in March 1995. The mandate of the mission was to assist Haiti in sustaining a secure and stable environment, protecting international personnel and key installations, creating the conditions for holding elections, and establishing a new professional police force.¹⁹² Rene Preval, a close associate of Aristide, won presidential elections held in December 1995.¹⁹³

187 Barrie (2001) 162.

188 Despite castigation by Haitian Officials of the Security Council's inaction, the Council at first maintained that the crisis in Haiti was purely internal, and that it did not in any way jeopardise international peace and security.

189 Barrie (2001) 1962.

190 See UN Doc S/Res/841 (1993).

191 See UN Doc S/Res/940 (1994).

192 Abiew (1999) 217.

193 Abiew (1999) 217; Barrie (2001) 163.

The UN-authorized, US-led multilateral involvement in Haiti could signal a precedent in support of collective humanitarian intervention, except that the authorisation of the council was based on Chapter VII, which obliged the Security Council to first determine that the situation constituted a threat to international peace and security. For some commentators, the intervention was based on an emerging principle of 'pro-democratic intervention'.¹⁹⁴ Nevertheless, humanitarian considerations played a role in Resolution 940 in that it expressed grave concerns regarding a significant continued deterioration of the humanitarian situation in Haiti.

Finally, an analysis of the recent Kosovo intervention of 1999. The origins of the crisis in the Kosovo province of the former Yugoslavia have to be understood in terms of a new wave of nationalism that led to the rise to the Presidency of Slobadan Milosevic and the official adoption of an extremist Serbian agenda under him.¹⁹⁵ The revocation of Kosovo's autonomy in 1989 was followed by a Belgrade policy aimed at changing the ethnic composition of Kosovo and creating an apartheid-like society.¹⁹⁶ From the early 1990s, it was clear that a crisis in Kosovo was eminent. The armed conflict between the Kosovo Liberation Army (KLA) and the Federal Republic of Yugoslavia (FRY) began in 1998.

By Resolution 1199 of 23 September 1998, the UN Security Council called for the withdrawal of the Serbian forces from Kosovo following the humanitarian crisis in the region that saw refugees pouring out of Kosovo to neighbouring countries.¹⁹⁷ In March 1999, NATO, purporting to be acting under authority of Resolution 1199,

194 The paradigm of pro-democratic intervention, which is beyond the scope of the present study, presupposes legitimate interference in the internal affairs of a state for purposes of restoring democracy and human rights. This paradigm is related to that of 'intervention to facilitate self determination'. For a fuller discussion see section 1 of this contribution, for a conceptual clarification of humanitarian intervention and related concepts.

195 Independent Commission on Kosovo (2000) 1.

196 As above.

197 See Resolution 1199 of 23 September 1998, UN Doc S/Res/1199 (1998). The other resolutions that the Security Council passed in connection with Kosovo are Resolution 1160 of 31 March 1998, UN Doc/S/ Res/1160 (1998); Resolution 1203 of 24 October 1998, UN Doc S/Res/1203 (1998); Resolution 1239 of 14 May 1999, UN Doc/S/Res/1239 (1999) and Resolution 1244 of 10 June 1999, UN Doc S/Res/1244 (1999).

launched a 78-day bombardment targeting the positions of the Belgrade government in Kosovo.¹⁹⁸ Participation by the UN after the NATO intervention,¹⁹⁹ in the arrangements negotiated to end NATO's use of force added a sense of *ex-post* UN legitimacy to the operation.

The question of the use of force by NATO in its air campaign was submitted to the ICJ by the FRY.²⁰⁰ The FRY alleged that the NATO attack and the subsequent bombing were violations of international law, and appealed to both the ICJ and the International Criminal Tribunal for the former Yugoslavia (ICTY) for formal legal action against the responsible NATO governments. The Court declined to make a decision on jurisdictional grounds.

The legality of NATO's 1999 military intervention in Kosovo is somewhat shaky, given the decision to proceed with an armed intervention without obtaining, or even seeking, a clear UN Security Council authorisation, and without making any sort of secondary appeal to the General Assembly's Uniting for Peace Resolution mandate.²⁰¹ Also, NATO's own constituting treaty does not provide any convincing legal grounds for recourse to force aside from meeting an external use of force directed at the territorial integrity and political independence of its member countries.

History and state practice will determine whether NATO's action in Kosovo amounts to humanitarian intervention or not. What is clear, however, is that the whole NATO eleven-week air war on Yugoslavia, to force Milosevic to end a crackdown in Kosovo, must be judged in the context of forcible humanitarian intervention.²⁰² NATO's military operations in the Kosovo conflict, which were not expressly sanctioned by the Security Council under Chapter VII of the UN Charter, might have established an important precedent for humanitarian intervention in Kosovo-type situations.

198 According to the then NATO Secretary-General Javier Solana, Resolution 1199 gave NATO the right to use force. See Barrie (2001) 163. On NATO's application of armed force against the Federal Republic of Yugoslavia, see Kritsiotis (2000) 49 ff; Burger (2000) 129.

199 See UN Security Council Resolution 1244 of 10 June 1999, UN Doc S/Res/1244 (1999), reproduced in Independent Commission on Kosovo (2000) 325.

200 *The Case Concerning Legality of the Use of Force Yugoslavia V United States of America* ICJ Press Communiqué of 2 June 1999.

201 Under the Uniting for Peace Resolution 1950, the General Assembly is authorised to act in the event that the Security Council cannot meet its obligations to address threats to international peace and security.

202 Barrie (2001) 164.

Opinio Juris

The second criterion for the validity of a rule of custom, *opinio juris*, can be best explained in terms of the express or tacit approval or acquiescence that states accord acts of humanitarian intervention. *Opinio juris* is the psychological element, which is required for formation of a rule of customary international law. The requirement of *opinio juris*, according to Brownlie, obliges that states must recognise that the practice in question is obligatory, and that it is required by or is consistent with current international law.²⁰³ The sense of legal obligation as opposed to motives of courtesy, fairness or morality must be real enough.²⁰⁴

In determining whether or not there exists the necessary *opinio juris* in respect of humanitarian intervention, one must critically consider that states continue to apply armed force for humanitarian purposes without the formal authorisation of the UN.²⁰⁵ Moreover, the express or tacit approval that follows acts of humanitarian intervention may be the basis for an argument that states are increasingly manifesting the necessary *opinio juris*. Kritsiotis advances this argument by saying that states continue to intervene in other states by military force without any condemnation or censure. Instead, he adds, the interventions have been greeted by the 'apparent approval and applause of states.'²⁰⁶

In the case of India's invasion of Pakistan cited above, the approval of the international community can be seen in the admission into the UN of a new member state, Bangladesh, whose establishment was a direct result of the intervention.²⁰⁷ In the case of Tanzania's invasion of Uganda, the international community accepted Idi Amin's overthrow without protest, indeed, for the most part, with relief.²⁰⁸ Only in the case of Vietnam's invasion of Cambodia did the UN refuse to recognise the new regime installed by the intervening power,²⁰⁹ but even there, a substantial number of states supported the intervention.

203 Brownlie (1998) 6.

204 Brownlie (1998) 6.

205 Kritsiotis (1998) 1007.

206 *Ibid.*

207 Mortimer (1998) 120.

208 *Ibid.*

209 *Ibid.*

The ICJ did emphasise in the *Nicaragua* case (merits)²¹⁰ that the conduct of states is an important indicator of *opinio juris*. In that case the Court stated that either the states taking action or other states in a position to react to the act must have behaved so that their conduct is 'evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it'.²¹¹ The conduct of intervening states (in terms of continued interventions even after the coming into force of the UN Charter) and that of the rest of the world (relating to express or tacit approval or acquiescence) supports the view that there exists the necessary *opinio juris* for humanitarian intervention.

210 (1986) ICJ Rep 14.

211 (1986) ICJ Rep 77.

STATE SOVEREIGNTY VERSUS HUMANITARIAN INTERVENTION IN THE CONTEXT OF A CHANGING WORLD ORDER

Origins and Development of the Concept of State Sovereignty

According to Paasivirta, the original meaning of the word sovereignty in legal and political theory is related to the idea of superiority.²¹² Its root word is *supra*, meaning 'above'. In mainstream legal and political theory, therefore, the sovereign is the holder of ultimate power.²¹³ In the Westphalian international system the ultimate power holder is the state.²¹⁴ In international law, the idea of sovereignty relates to the idea of independence and non-intervention in internal affairs.²¹⁵ The right to be independent assumes the right of state autonomy in issues pertaining to its internal affairs and the carrying out of its external relations. A classic definition of sovereignty was given by Judge Max Huber in the *Island of Palmas case* in 1928. Thus:

Sovereignty in the relations between states signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other state, the functions of a state.²¹⁶

This absolute notion of state sovereignty discussed above has its origins in Aristotle's *Politics*, and the classic body of Roman law.²¹⁷ Further development of the concept was to come with the formation of the nation state. To Grotius, sovereignty was 'that power whose acts are not subject to the control of another, so that they may be void by the act of any other human will'.²¹⁸

212 Paasivirta (1990) 315 331.

213 Abiew (1999) 24.

214 Abiew (1999) 25.

215 According to Damrosch, Emerich De Vattel first defined the norm against intervention in international law in 1858, although the doctrine existed hitherto in unwritten custom. 'Non-intervention' means the prohibition of 'improper interference by an outside power with the territorial integrity, or political independence of states'. See Damrosch (1993) 93. The concepts of 'state sovereignty' and 'non-intervention' are often conterminous with each other, and are used in this study interchangeably. On this point see Kwakwa (1994) 9 12.

216 Permanent Court of Arbitration, 4 April 1928, 2 UNRIAA 829 838.

217 Meriam (1968) 11.

218 *Ibid* (1968) 21.

It is a truism that the doctrine of state sovereignty and its concomitant principle of non-intervention enjoy a high prominence in international law.²¹⁹ Brownlie refers to sovereignty as 'the pillar of international law';²²⁰ while Chigara refers to it as 'the bedrock' upon which modern international law has been raised.²²¹ Henkin argues that sovereignty is concomitant to state autonomy of each state.²²² State autonomy, he adds, 'suggests that a state is not subject to any external authority unless it has voluntarily consented to such authority' or coercive interference by an outside party or parties, in the sphere of jurisdiction of a sovereign state.²²³

The norms of state sovereignty and non-intervention predate the UN Charter. Further, the norms have a long history and are seen to be legally obligatory and not a practice of comity. They have found expression in numerous international instruments of universal, regional and bilateral kind, aptly illustrated in the 1993 Montevideo Convention on the Rights and Duties of States, which declared that 'no state has a right to intervene in the internal and external affairs of another'.²²⁴ The same principles are expressed in the Charter of the Organisation of American States in quite absolute terms, thus:

No state or group of states has a right to intervene directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other state. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the state or against the political, economic and cultural elements. (Emphasis added)²²⁵

219 For an analysis regarding the 'prominence' of the principles of sovereignty and non-intervention in international law, see Kritsiotis (1998) 1005 1008-1013.

220 See Brownlie (1998) 287.

221 Chigara (2000) 58 62.

222 Henkin (1995) 11.

223 *Ibid.*

224 165 LNTS 19, art 8.

225 119 UNTS 3, art 3.

Non-intervention and state sovereignty principles are also enshrined in article 8 of the Pact of the League of Arab States (1945),²²⁶ article 3 of the OAU Charter 1963),²²⁷ article 3 of the International Law Commission Draft Declaration on the Rights and Duties of States (1949)²²⁸ and parts I and II of the Helsinki Final Act (1975).²²⁹ The UN Charter itself states that the organisation (UN) is founded on, *inter alia*, the principle of sovereign equality of its members.²³⁰ The Charter also affirms the principle of equal rights and self-determination of peoples.²³¹ Both these principles are a corollary of every state's right to sovereignty, territorial integrity and independence that the sovereignty and non-intervention rules seek to advance. Article 2(7) of the Charter specifically provides that nothing in the Charter authorises intervention in matters that are 'essentially within the jurisdiction of any state'.

The principles of state sovereignty and non-intervention are reflected firmly in post-UN Charter declarations. In 1965, the UN General Assembly adopted the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (commonly referred to as the Declaration on Non-intervention).²³² The Declaration specifically spells out that states should refrain from acts that are, by their very nature, capable of violating the sovereignty and independence of other states.²³³

In 1970 the same principle was embodied in the UN General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States (the 'Friendly Relations Declaration'), which provides explicitly:

226 Adopted 22 March 1945; 70 UNTS 234.

227 Adopted 25 May 1963; 2 ILM 768.

228 Yearbook of International Law Commission (1949) 286.

229 Adopted 1 August 1975; 14 ILM 1292.

230 Art 2(1).

231 Art 1(2).

232 UNGA Res 2131 (XX) of 21 Dec 1965.

233 Art 3.

No state or group of states has a right to intervene directly or indirectly ... in the internal or external affairs of any state. Consequently, armed intervention and all other forms of interference, or attempted threats against the personality of a state against its political, economic and cultural elements are a violation of international law.²³⁴

Noteworthy more recent texts embodying the principle of non-intervention are the 1981 Algiers Accord where the United States pledged that it would not intervene in Iran's internal affairs;²³⁵ and the Agreement signed by five Central American presidents in 1987, affirming the right of all nations to determine freely and without outside interference of any kind on their economic, political and social models.²³⁶

Apart from treaties and declarations, international case law is also averse to state intervention in the internal affairs of other states. In the *Corfu Channel case*²³⁷ UK had entered the territorial waters of Albania in order to sweep mines planted there by the Albanian government, with a view to present the mines as evidence in an international tribunal. The ICJ observed:

the alleged right of intervention as a manifestation of a policy of force such as has, in the past, given rise to most serious abuses and as such cannot, whatever be the present defects in international organisation, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here; for from the nature of things it would be reserved for the most powerful states, and might easily lead to preventing the administration on international justice itself.²³⁸

234 *The Declaration on the Principles of International Law Concerning Friendly Relations and Co-operation in Accordance with the Charter of the United Nations* UNGA Res 2625 (XXV) of 24 Oct 1970.

235 Reproduced in (1981) 75 *American Journal of International Law* 418.

236 Reproduced in (1987) 26 *ILM* 1164.

237 (1949) ICJ Rep 4 35.

238 (1949) ICJ Rep 4 35.

The Court, in rejecting UK's argument that the use of force in Albanian waters did not infringe on state sovereignty, maintained that 'to ensure respect for international law... the court must declare that the action of the British Navy constituted a violation of Albanian sovereignty'.²³⁹ After analysing this case, Hassan opines that it reaffirms the unassailability of state sovereignty as an essential foundation of international relations.²⁴⁰

Gradual Erosion of the Concept of State Sovereignty in Favour of Human Rights and Overall Human Rights Development

Notwithstanding the importance attached to sovereignty in the international legal system, developments in the last five decades or so has gradually but inevitably changed the original conception of sovereignty. The changes in the legal interpretation of the norm enshrined in article 2(7) of the UN Charter and the entire concept of state sovereignty are as a result of the fact that the material conditions under which sovereignty is exercised have dramatically changed since 1945.²⁴¹

The developments in the field of human rights have had far-reaching impact on the principle of state sovereignty, which was a key element of the UN Charter when it was drawn up in 1945. Furthermore, the broader process of internationalisation (i.e. the growing importance of international agreements, membership of international organisations and economic interdependence as well as the increasing prominent role of international NGOs and the media) has greatly reduced state sovereignty in practical terms.²⁴² These factors, coupled with the changing nature of armed conflicts especially after the end of the Cold War and the changing attitudes of states towards intervention have had the cumulative effect of making the need to strike a proper balance between the ban on the use of force between states and human rights more pressing than ever.

239 (1949) ICJ Rep 4 35.

240 Hassan (1980/81) 859.

241 Kwakwa (1994) 18.

242 Advisory Council on International Affairs & Advisory Committee on Issues of Public International Law (2000) 10.

First, sovereignty in the classical sense has suffered from the increasing internationalisation of human rights. The tremendous increase in the *corpus* (body) of human rights law in the last few decades has resulted in the removal of the question of human rights from the domain of individual sovereign states; and the fundamental rights and freedoms of the individual are now the concern of the international community as a collectivity. States have entered into treaties or undertaken commitments to human rights under customary international law, resulting in a growing link between human rights and the right to intervene on human rights grounds.²⁴³ Today as opposed to earlier periods, the obligation to uphold human rights is accorded priority over the principle of sovereignty and the domestic jurisdiction of states.²⁴⁴

For a long time, human rights were treated as matters 'essentially within the domestic jurisdiction of states'. Today, human rights are an established part of international law with an institutional structure-including substantive definition of human rights and mechanisms to enforce these rights-and with universal application.²⁴⁵ There has been a massive internalisation of human rights.²⁴⁶ The universal nature of human rights is clearly manifest in the title of the first global human rights instrument-the *Universal Declaration of Human Rights*²⁴⁷-and espoused in its preamble, which describes the Declaration as 'a common standard of achievement for all peoples and all nations'. The universality doctrine means that generally speaking, human rights standards defy economic, geographic, political, social and cultural barriers. They are universal and common.

243 Kwakwa (1994) 19.

244 Brownlie (1990) 564-580.

245 McCorquodale & Fairbrother (1999) 739.

246 Cranston (1973) 1 has defined human rights as ('the rights of all people in all places at all times'); Also Piechowiak (1999) 3 ('...human rights are understood as rights which belong to any individual as a consequence of being human, independently of acts of law').

247 Emphasis added, Adopted by the UN General Assembly as Resolution 217 (III) of 10 Dec 1948.

The 1993 Vienna Declaration on Human Rights carries universality further by declaring in unambiguous phrases that 'human rights and fundamental freedoms are the birthright of *all* human beings' and 'the universal nature of these rights and freedoms is beyond question'.²⁴⁸ The Declaration also makes it clear that all human rights are universal and that 'the international community must treat human rights globally in a fair and equal manner on the same footing and with the same emphasis.

The internationalisation of human rights has also permeated the province hitherto a reserve of economic blocs of states, such as the European Union, by which European states have ceded a great deal of their sovereignty in favour of integration and regional development.²⁴⁹ In Africa, the African Charter on Human and Peoples' Rights²⁵⁰ has been ratified by all African states, so has the Constitutive Act of the newly launched African Union (AU).

Human rights have increasingly become a 'shared responsibility' of both states and the international community. While the state remains primarily responsible for securing human rights, in this respect it can be called to give an account in international forums, which have developed increasingly sophisticated monitoring mechanisms for this purpose.²⁵¹ Apart from the state, the institutions of global economic governance, notably the International Monetary Fund (IMF) and the World Bank have had to abandon their concentration on economic issues in order to factor human rights in their operations.

248 See The World Conference on Human Rights: The Vienna Declaration and Programme of Action (1993), UN Doc A/CONF 157/23, Part 1, Para 1.

249 The European Union was established through the 1992 Treaty of Maastricht.

250 OAU document OAU/CAB/LEG/67/3/Rev 5, adopted by the OAU Heads of State and Government on 17 June 1981; entry into force 21 October 1986, reprinted in (1986) 7 *African Human Rights Law Journal* 403 and in *Human Rights Law in Africa* (1996) 6.

251 Advisory Council on International Affairs & Advisory Committee on Issues of Public International Law (2000) 9.

For a long time, the IMF and the World Bank preferred restricting their activities to the promotion of economic advancement of member countries, treating issues like human rights as political issues.²⁵² However, these institutions began taking into consideration issues of human rights in the 1980s and 1990s, in order to achieve overall human development.²⁵³ For example, the IMF in 1997 issued guidelines on governance, while the World Bank also began talking much more about popular participation. The World Bank now strongly advocates for incorporation of NGOs and civil society in economic, social and political issues. In 1998, the bank issued a comprehensive policy document on the link between development and human rights.²⁵⁴

The second factor that has contributed to the erosion of state sovereignty relates to the exponential increase, in the last few decades, in the global interdependence and interconnection, as exemplified by the concept of globalisation.²⁵⁵ Transformations on the world scene have greatly eroded the boundaries between national economies and the world economies, which has never been as closely integrated in as many ways as it is today.²⁵⁶ As Kwakwa notes

252 See Tomasevski (1995) 406.

253 See, for instance, Tomasevski (1995) 406 ("The most explicit and unexpected policy change concerning human rights has occurred at the World Bank. Until recently, the Bank claimed that it was prevented by its Articles of Agreement from taking human rights into account. In 1991, the Bank stated that the aim of development was 'to increase the economic, political and civil rights of all people across gender, ethnic groups, religions, races, regions, and countries'...[B]y 1992, however, the Bank had ventured into defining and applying criteria of good governance in its lending").

254 See generally, World Bank (1998).

255 The term 'globalisation' is a contested term and there is no generally accepted definition of it. See Mc Corquodale & Fairbrother (1999) 736; For example, see Garcia (1999) 56 (It is 'the process and result of interaction between different states of the world in matters of sovereignty, culture and economy') and UNDP (1999) 2 ('Globalisation represents the sum total of political, social, economic, legal and symbolic processes rendering the division of the globe into national boundaries increasingly less important for the purpose of individual meanings and social decision').

256 Kwakwa (1994) 19.

Globali[s]ation also affects national governments by subjecting their domestic policies to greater international scrutiny and increasing the ability of foreign governments to apply pressure on them. The increasing globali[s]ation of the world economy in matters of trade, immigration, and financial flows challenges the notion that decisions are made exclusively within defined territorial boundaries...Increased economic globali[s]ation has deprived governments of a say in financial flows and reduced them to managing the consequences of decisions made by [others].²⁵⁷

The phenomenon of globalisation favours the advancement of a single view of social, economic, political, cultural and environmental issues, making the world a single community where those of others ultimately influence the life and activities of each person across the world. Although globalisation is not an entirely new phenomenon, the last decade, 20th Century, witnessed a tremendous acceleration of the process. Globalisation is now, more than ever, increasing the contacts between people across national boundaries in economy, technology, culture and governance.²⁵⁸

Globalisation in its present form has resulted from interplay of a number of factors.²⁵⁹ One, there has emerged new, deregulated, globally linked markets for goods and services. Two, there are now new actors in the new global order. States are no longer the primary actors. Other entities like multinational corporations (MNCs) have come in with an integrated production and market system. The World Trade Organisation (WTO), the first multilateral organisation with authority to enforce national government's compliance with rules, an International Criminal Court (ICC) in the making to 'globalise' criminal justice, a booming international network of NGOs, as well as the proliferation of regional blocs such as the EU, SADC etc are now active actors in global affairs.

Three, new rules and norms have emerged. These include market economic policies world-over, with greater privatisation and liberalisation than before, human rights conventions building up in both coverage and number of signatories and conventions on the environment, trade and the Multilateral Agreement on Investment (MAI) now in debate. Finally, there are now faster and cheaper means and tools of communication, notably the fax, cellular phone, the electronic mail and the internet. All the above factors combined have resulted in three elements: shrinking time, shrinking space and disappearance of borders. The implications of these three elements are summarised below.

²⁵⁷ *Ibid.*

²⁵⁸ UNDP (1999) 2.

Shrinking time: Markets and technologies now change with unprecedented speed, with action at a distance in real time impacting on peoples' lives far away.

Shrinking Space: Peoples' lives, their jobs, incomes and health are affected by events on the other side of the globe, often by events they do not know about.

Disappearance of borders: National borders are breaking down, not only for trade, capital and information, but also for ideas, norms, cultures and values. Borders are also breaking down in economic policy, as multilateral agreements and the pressures of staying competitive in the global market constrain the options for national policy, and as MNCs and global crime syndicates integrate their operations globally. Shrinking time, shrinking space and the disappearance of borders has led to the erosion of the classical doctrine of state sovereignty.

The third contributory to an erosion of the concept of state sovereignty is the revolutionary developments in telecommunications and technology, which are also linked to the issue of human rights. These revolutions have eliminated the controls that governments exercised over the availability and dissemination of information. One author captured the role of media technology in exposing information contained in a state, including abuse of human rights, in the following terms:

Television and satellites have created an unprecedented capacity for people all over the world to watch what is happening in other countries. For example, satellite television contributed to the end of apartheid and precipitated the [US]-led intervention in Somalia... Human rights monitors and TV networks such as the CNN use video recorders to document and communicate vivid images of human rights abuses wherever they occur. The net effect of this has been to make a state's exercise of traditional sovereign functions more transparent and therefore more subject to review by the international community.²⁶⁰

A fourth and major factor that has contributed to the decline of the concept of state sovereignty is the changing patterns of armed conflict. The involvement of the international community in violent conflicts and humanitarian crises has substantially

259 See generally, Box 1.1, UNDP (1999) 30.

260 See Kwakwa (1994) 20.

increased since the end of the Cold War.²⁶¹ At the same time the world security system has changed. Whereas the Cold War was marked by global rivalry between the superpowers, many countries are now discovering that they are no longer of sufficient strategic importance to the erstwhile foes to qualify for international assistance.²⁶² The result of this state of affairs where direct superpower involvement in conflict is declining is exacerbation of armed conflicts to an extent whereby some states have disintegrated or are in the verge of doing so.²⁶³ Consequently, governments of various countries have resorted to harsh repressive measures in an attempt to maintain national unity.²⁶⁴

These new patterns of conflict means that the traditional diplomatic means of intervention may not apply where whole populations are threatened with extermination by their own governments. Economic sanctions, too, have a limited effect, as their impact only becomes apparent in the long term, whereas the prevention of genocide or mass slaughter of civilians calls for rapid, decisive action.²⁶⁵ What this means is that military intervention is often the only way left to contain a catastrophe,²⁶⁶ and this has substantially eroded the principle of state sovereignty as traditionally conceived.

261 This is reflected in the number of UN Security Council resolutions on humanitarian crises and the increase in the number of UN peacekeeping troops and military coalitions deployed around the globe since 1990.

262 Advisory Council on International Affairs & Advisory Committee on Issues of Public International Law (2000) 10.

263 See Helman & Ratner (1992/1993) 5 (where a distinction is made between 'failed states' such as Somalia and Liberia, 'whose governmental structures have been overwhelmed by circumstances', and 'failing states' like Zaire (now DRC), 'where collapse is not imminent but could occur within several years').

264 Advisory Council on International Affairs & Advisory Committee on Issues of Public International Law (2000) 10.

265 *Ibid.*

266 *Ibid.*

CONCLUSION

This contribution has demonstrated that despite the legal and policy objections that are often raised against humanitarian intervention, the doctrine has a basis under both the law of treaties and customary international law. However, this legal basis can only be defended if current international law is progressively interpreted, in light of an evolving world order. It has also been shown that despite the centrality of the doctrine of state sovereignty and the concomitant principles of non-intervention in internal affairs and non-use of force, contemporary developments have very much led to erosion of these doctrines as traditionally conceived. The upshot of this state of affairs is that humanitarian intervention is not only legal today, but is also a legitimate option for achieving the protection of fundamental human rights, especially in Africa where these have been violated *en masse* in the context of internal armed conflict that rock many countries on the Continent.

BIBLIOGRAPHY

- Abiew, FK (1999) *The Evolution of the Doctrine and Practice of Humanitarian Intervention* The Hague: Kluwer
- ACUNS (2001) *Humanitarian Intervention and the Role of International Organisations* Report of a Workshop of Experts held at the University of Namibia, Windhoek, 5-18 August 2001
- Advisory Council on International Affairs & Advisory Committee on Issues of Public International Law (2000) *Humanitarian Intervention* A Report submitted to the Government of the Netherlands pursuant to the request of the Minister for Foreign Affairs (Copy on file)
- Barrie, G 'Humanitarian Intervention in the Post Cold-War Era' (2001) 118 *South African Law Journal* 155
- Barrie, G 'International Intervention and Forcible Intervention: A Millennium Assessment' Du Plessis, L & Hough, M (eds) (2000) *Managing African Conflicts: The Challenge of Military Intervention* Pretoria. ISS
- Barrie, GB 'South Africa's Forcible Intervention in Lesotho: What Does International Law Say?' (1999) 32 *De Rebus* 46
- Brownlie, I (1963) *International Law and the Use of Force* Oxford: Clarendon Press
- Brownlie, I (1998) *Principles of Public International Law* Oxford: OUP
- Bull, H (ed) *Intervention in World Politics* Oxford: Clarendon Press

- Charney, JI 'Anticipatory Humanitarian Intervention in Kosovo' (1999) 32 *Vanderbilt Journal of Transnational Law* 1
- Chigara, B 'The Operation of the SADC Protocol on Politics, Defence and Security in the Democratic Republic of Congo' (2000) 12 *African Journal of International and Comparative Law* 58
- Damrosch, LF 'Politics Across Borders: Non-intervention and Non-forcible Influence Over Domestic Affairs' (1989) 83 *American Journal of International Law* 1
- Daniel, K & Musungu, SF 'The African Union and the Question of Humanitarian Intervention: A New Dawn?' (2002) 1 *African Journal of International and Comparative Law* 83
- Dorman, A & Otte, D (eds) (1995) *Military Intervention: From Gunboat Diplomacy to Humanitarian Intervention* Hants: Dartmouth
- Dugard, J (2000) *International Law: A South African Perspective* Klewyn: Juta
- Ezejiolor, G & Quashigah, EK 'The United Nations and Humanitarian Intervention in the Contemporary World Situation' (1993) *Proceedings of the 5th Annual Conference of the African Society of International and Comparative Law* 36
- Farer, TJ 'An Inquiry into the Legitimacy of Humanitarian Intervention' Damrosch, LF & Scheffer, DJ (eds) (1991) *Law and Force in the New International Order* Boulder: Westview 185
- Fonteyne, JPL 'The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the UN Charter' (1979) 4 *California Western International Law Journal* 203
- Franck, T & Rodley, NS 'After Bangladesh: The Law of Humanitarian Intervention by Military Force' (1973) 67 *American Journal of International Law* 275
- Gaeta, P 'The Dayton Peace Agreements and International Law' (1966) 7:2 *European Journal of International Law* 147
- Harriss, J (ed) (1995) *The Politics of Humanitarian Intervention* London: Pinter
- Helman, G & Ratner, S 'Saving Failed States' (1992-1993) 89 *Foreign Policy* 3
- Henkin, L (1995) *International Law, Politics and Values* Dordrecht: Martinus Nijhoff
- Independent Commission on Kosovo (2000) *The Kosovo Report* Oxford: OUP

- Kindiki, K 'The Legality and Applicability of Humanitarian Intervention to Internal Armed Conflicts in Africa' (2001a) 7 *East African Journal of Peace and Human Rights* 16
- Kindiki, K 'Prosecuting the Perpetrators of the 1994 Genocide in Rwanda: Its Basis in International Law and Implications for the Protection of Human Rights in Africa' (2001b) 1 *African Human Rights Law Journal* 64
- Kritsiotis, D 'Reappraising Policy Objections to Humanitarian Intervention' (1998) 19 *Michigan Journal of International Law* 1005
- Kritsiotis, D 'The Kosovo Crisis and NATO's Application of Armed Force Against the Federal Republic of Yugoslavia' (2000) 49 *International and Comparative Law Quarterly* 330
- Kufuor, KO 'The Legality of the Intervention in the Liberian Civil War by the Economic Community of West African States' (1993) 5 *African Journal of International and Comparative Law* 523
- Kwakwa, E 'Internal Armed Conflicts in Africa: Is There a Right of Humanitarian Action?' (1994) 2 *African Yearbook of International Law* 9
- Lillich, RB 'Forcible Self-help by States to Protect Human Rights' (1967) 53 *Iowa Law Review* 325
- Mekenkamp, M *et al* (eds) (1999) *Searching for Peace in Africa* Utrecht: European Platform for Conflict Prevention and Transformation
- Meriam, CE (1968) *History of the Theory of Sovereignty Since Rousseau* New York: Arms Press
- Moore, JN 'The Control of Foreign Intervention in International Conflict' (1969) 9 *Virginia Journal of International Law* 205
- Mortimer, E "Under What Circumstances Should the UN Intervene in a 'Domestic Crisis?'" Otunnu, AO & Doyle, MW (eds) (2000) *Peacemaking and Peacekeeping for the New Century* Lanham: Rowman & Littlefield 119
- Newman, F & Weissbrodt, D (1996) *International Law, Policy and Process* Cincinnati: Anderson
- Oppenheim, L (1905) *International Law: Volume 1* London: Longman
- Orentlicher, DF 'Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime' (1991) *Yale Law Journal* 2537

- Paasivirta, E 'Internationali[s]ation and Stabili[s]ation of Contracts Versus State Sovereignty' (1990) *British Yearbook of International Law* 315
- Reed, LW & Kaysen, C (eds) (1993) *Emerging Norms of Justified Intervention* New York: American Academy of Sciences
- Reisman, WM 'Hollow Victory: Humanitarian Intervention and the Protection of Minorities' (1997) 91 *Proceedings of the Annual Conference of the American Society of International Law* 431
- Ronzitti, N (1985) *Rescuing Nationals Abroad Through Military Coercion and Intervention on Grounds of Humanity* Dordrecht: Martinus Nijhoff
- Rosenau, JN 'Intervention as a Scientific Concept' (1969) 13 *Journal of Conflict Resolution* 160
- Solomon, H 'Analysing Conflict' Mekenkamp, M *et al* (eds) (1999) *Searching for Peace in Africa* Utrecht: European Platform for Conflict Prevention and Transformation
- Stowell, EC (1921) *Intervention in International Law* Washington D.C.: John Bryne
- Tanca, A (1993) *Foreign Armed Intervention in Internal Conflict* Dordrecht: Martinus Nijhoff
- Teson, F (1988) *Humanitarian Intervention: An Inquiry into Law and Morality* New York: Transnational
- Umozurike, UD 'Tanzania's Intervention in Uganda' (1982) 20 *Archiv Des Volkerrechts* 301
- UNDP (1999) *Human Development Report* New York: UNDP
- Verwey, WD 'Humanitarian Intervention' (1986) Cassese, A (ed) *The Current Legal Regulation of the Use of Force* Dordrecht: Martinus Nijhoff
- World Bank (1998) *The World Bank and Human Rights* Washington, D.C.: The World Bank