

UNIVERSITY OF NAMIBIA

FACULTY OF LAW

**THE LEGAL ASSESSMENT OF THE PRINCIPLE OF MILITARY
INTERVENTION IN CONTEMPORARY INTERNATIONAL LAW:
A CASE STUDY OF IVORY COAST**

A dissertation submitted in partial fulfillment of the professional bachelor of laws (LLB)
degree

SUBMITTED BY: ITANA ALBERTINA

STUDENT NUMBER: 200709607

SUPERVISOR: MR. FRANÇOIS BANGAMWABO

November 2011

Declarations

“I, the undersigned hereby declare that the work contained in this dissertation for the purpose of obtaining my degree is my own work and that I have not used any other sources than those listed in the bibliography and quoted in the references.”

Signature

Date

I, the undersigned hereby certify that the research and writing of this dissertation was carried out under my supervision.

Supervisor's signature

Date

TABLE OF CONTENTS

Declarations.....	i
Acknowledgements.....	ii
Dedications.....	iii
Abbreviations.....	iv
Abstract.....	Error! Bookmark not defined.
Introduction.....	Error! Bookmark not defined.
Literature review.....	Error! Bookmark not defined.
Research Methodology.....	Error! Bookmark not defined.
CHAPTER 1	Error! Bookmark not defined.
<u>Humanitarian intervention under a microscope</u>	Error! Bookmark not defined.
1.1 Introduction.....	9
1.2 Military intervention defined.....	Error! Bookmark not defined.
1.3 Distinction between humanitarian intervention and a mere use of force.....	Error! Bookmark not defined.
1.4 Challenges to military intervention.....	Error! Bookmark not defined.
1.4 Is there a duty to intervene?.....	Error! Bookmark not defined.

1.6 Conclusion	13
CHAPTER 2	Error! Bookmark not defined.
<u>the legality and the legitimacy of military intervention</u>	Error! Bookmark not defined.
2.1 Introduction	15
2.2 Customary international law.....	Error! Bookmark not defined.
2.3 Concept of Just wars.....	Error! Bookmark not defined.
2.4 The UN Charter and the ban on the use of force.....	Error! Bookmark not defined.
2.5 Is humanitarian intervention prohibited under international law?.....	Error! Bookmark not defined.
2.6 Authorisation.....	Error! Bookmark not defined.
2.7 UN charter authorisation.....	23
2.8 Process of authorisation.....	Error! Bookmark not defined.
2.9 Legitimacy of humanitarian intervention.....	25
2.10 human rights and military intervention.....	28
2.11 Conclusion.....	30
CHAPTER 3	Error! Bookmark not defined.
<u>The dilemma of sovereignty and humanitarian intervention</u>	Error! Bookmark not defined.
3.1 Introduction	31
3.2 Principle of territorial sovereignty.....	Error! Bookmark not defined.

3.3 Sovereign equality.....	Error! Bookmark not defined.
3.4 Responsibility to protect.....	Error! Bookmark not defined.
3.5 Conclusion	38
CHAPTER 4	Error! Bookmark not defined.
<u>The legality of frenc militarry intervention in ivory coast</u>	Error! Bookmark not defined.
4.1 Introduction.....	39
4.2 Background to the crisis in Ivory Coast.....	Error! Bookmark not defined.
4.3 Justification to the French involvement.....	Error! Bookmark not defined.
4.4 can a state use force against another to install a democratic regime.....	42
4.3 Lawfulness or otherwise of the French activities in Ivory Coast.....	Error! Bookmark not defined.
4.4 <u>A comparative study of military intervention in Ivory Coast and past cases of military intervention:</u>	Error! Bookmark not defined.
Kosovo.....	Error! Bookmark not defined.
Rwanda.....	Error! Bookmark not defined.
Somalia.....	Error! Bookmark not defined.
Comparative analysis of the above cases to Ivory Coast.....	50
4.5 conclusion.....	51

Recommendations.....52

Conclusion.....
Error! Bookmark not defined.

Reference list.....
Error! Bookmark not defined.

Books.....
Error! Bookmark not defined.

Journals.....
Error! Bookmark not defined.

Websites.....
Error! Bookmark not defined.

Acknowledgements

There are a number of people who have assisted me in the preparation of this work. In particular I thank Mr. François Bangamwabo who commented and guided me in the writing of the manuscript and Erkie Haipinge who kindly read the drafts. I received assistance in research from Wilson Shikoto which was very helpful for this paper.

Dedications

For Andrew Penda, my mentor and best friend

Abbreviations

- NATO - North Atlantic Treaty Organization
- ICISS - International Commission on Intervention and State Sovereignty
- R2P - Responsibility to Protect
- UN - United Nations organisation
- SC - United Nation's Security Council
- UN Charter - Charter of the United Nations
- UDHR - Universal Declaration of Human Rights
- ICJ - International Court Of Justice
- UNHCR -United Nations High Commissioner for Refugees
- UNOCI -United Nations Operation in Côte d'Ivoire
- PDI -Pro-democratic intervention
- UNITAF -Unified Task Force
- FRY -Federal Republic of Yugoslavia

Abstract

As much as military intervention is prohibited under international law, under the prohibition against the use of force by the states and under the doctrine of non intervention, whenever there is crises in another country, other countries always seem to intervene in such a crisis through military intervention. The use of military intervention, whether authorized or not, has become increasingly influential in the modern wars. Such interventions are sometimes against international law and in breach of sovereignty. The topic was chosen because there is a need to analyse the use of military intervention, which is often in the form of invasion. States take military intervention in other countries' unrest disregarding the state sovereignty of such countries. Military interventions can sometimes result in more bloodshed and may result in a matter of national security and violation of human rights. Sometimes it is unclear what the purpose of such intervention is, whether the intervention should be helping rebels or civilians and how such military activities should be conducted. So the reason why this topic was chosen is to determine the challenges of military intervention. The paper will seek to analyse what circumstances necessitate military intervention, when the military intervention is lawful under international law and when such intervention constitute illegal use of force. Meaning what circumstances are required before military intervention is deemed appropriate. The paper will also look at the principle of sovereignty with regard to intervention (comparing human rights and the right to self-determination and it will do a case study of past cases of military intervention including the recent France intervention in Ivory cost.

Introduction

“Humanitarian intervention saves lives and costs lives. It upholds International law and sometimes breaks international law. It prevents Human rights violations and it perpetrates them.”¹

Humanitarian intervention can result in gross human rights violation and this is a breach of international law. The use of military force can have all kinds of unintended consequences. It can be intended to prevent civilian casualties, but even the most prudent use of air power is incapable of doing that resulting in more casualties. Humanitarian intervention may involve killing for humanitarian purposes. That is forsaking the lives of few to save the lives of many.

Non-intervention on the other hand make conflicts worse than otherwise would have been, therefore intervention militarily is essential to help end human suffering in a distressed state. In recent years, humanitarian intervention has been a subject of a great number of documents and international discourse. Despite this, humanitarian intervention remains the source of controversy, owing to problems connected with its legality and practical application. Although it is prohibited in international law by most treaties, chiefly in the UN charter, its interpretation and application still gives rise to serious problems. The UN Charter article 2(4) expressly condemns the use of force. Despite this prohibition, France still intervened militarily in Ivory Coast; NATO intervened in Kosovo and so on. So the use of force remains vigorous notwithstanding its prohibition.

Rwandan genocide demanded fast and forceful international military intervention but it was never received. The international community as well as states just sat and watched as the Rwandan people got massacred. This was due to the fact that it was up to the intervening states to choose whether to intervene or not. Most states chose to intervene in some wars and not in others because they have a motive although they would do so for humanitarian purpose. How can military ever be humanitarian? A realist may accept that the humanitarian objective can be achieved by violent means. However it still remains to be determined, what is the legitimacy of military intervention of states in other states internal affairs?

¹ Vessel David, 2003, The Lonely Pragmatist: Humanitarian Intervention In An imperfect World, B.Y.U. *Journal of Public Law Volume 18, Issue 1*, p. 1- 58.

The problem relates to the legality of the humanitarian intervention, more specifically unilateral humanitarian intervention. The research seeks to analyse unilateral military intervention in order to see when such military intervention is necessary, when it is legitimate, when it is legal and what the limits and challenges of such interventions are. This research will also seek to determine whether it is a moral duty or a legal right of a state(s) to intervene militarily in the internal affairs of another state militarily.

International law did not prescribe unilateral resort to war as a means of intervention. Because of the way powerful states exercise humanitarian intervention, it has been concluded that military intervention should be unlawful. The central question of this research is when is unauthorized humanitarian intervention lawful under international law? The legality of military intervention depends on many factors. For military intervention to be condemned, factors such as the cause in which military intervention should be pursued, means which is used and the outcome that result from it, international law instruments such as the UN charter etc., should be considered. The paper will analyse these factors in more detail.

This paper will be divided into the following chapters:

Chapter 1 will define military intervention including the definition of humanitarian intervention. The chapter will draw a distinction between humanitarian intervention and a mere use of force. The chapter will also draw a distinction between the state responsibility to protect and military intervention. Finally this chapter will determine whether or not there is a duty on states to offer military intervention to other states for humanitarian purposes.

Chapter 2 will analyse the UN's prohibition on the use of force in order to determine whether humanitarian intervention is part of the use of force prohibited or it forms an exception. The lawfulness of military intervention will be discussed in this chapter as it will look at the requirements of military intervention for it to be legal under international law. Thus this chapter will examine both the UN Charter and customary international law in this regard. It will inspect the prerequisites of military intervention. It analyses when military intervention is lawful and when it is unlawful. The chapter will determine whose authorisation is needed and also what the

consequences of not obtaining the necessary authorisation are. It will also examine the factors used to determine whether or not to give that authorisation.

Furthermore, Chapter 2 will seek to analyse when military intervention is necessary, and circumstances necessitate military intervention. Although there may be principles and positions around military intervention at various times, there has also been criteria for determining the legitimate intervention and these will be discussed in detail. The chapter will include the challenges and criteria used to justify intervention.

In chapter 3, the paper will look at the principle of sovereignty and intervention. It will discuss the principle of sovereign equality under the UN Charter as well as the sovereignty of the state. The chapter will also compare this right to sovereignty, which includes the right to self-determination, to human rights in order to solve the dilemma of protecting human rights and respect for sovereignty. Thus the chapter will attempt to answer the question whether human rights override the right of sovereignty

Chapter 4 will discuss Ivory Coast. An extensive discussion of France military intervention in Ivory Coast military will be done in order to determine under international law the legal status of an intervention by a state in another sovereign state aimed at putting a democratically elected government to power. A comparative study of Ivory Coast and past cases of military intervention such Rwanda, Kosovo, and Somalia will also be done.

Literature review

Much has been written on the subject of humanitarian intervention and the use of force in the 1990s and much has been published in the pages of the journals around this topic today. However, the justification and legality of military intervention has not received enough attention in these doctrinal debates. The real motives why states choose to intervene in some wars and not in others will be of illustrative importance in this research. Many of the authors talk about the use of force and the exceptions there to but they do not really state where does humanitarian intervention fall in this regard.

Herman Rodecker von Rotteck, whom Chesterman credits as the first to establish the theory of

intervention on the ground of humanity,² held that it should be considered as a violation of the law, and it is sometimes excused or even applauded, as one may excuse a crime. Chesterman also argued that there is no right of humanitarian intervention in either the UN Charter or customary international law. Moreover, Enabulele³ suggested that military intervention on the humanitarian ground is unlawful and that regarding it as lawful will reform international law.⁴

Antonio Tanca⁵ opines that any rules purporting to derogate from the absolute ban on the use of force must be based on reasonably clear and accepted criteria for its operation. On the same issue, Sean D Murphy argues that there is a weakness with regard to the Security Council and those should be addressed if efforts in the area of humanitarian interventions are to succeed. He argues that the existence of such a right will be subjected to abuse. States might forcibly intervene in domestic affairs of another state claiming that the target state is engaging in depriving of human rights when in fact such states are simply seeking to advance their own interest by altering the political and economic structures of the target state. With this he supports the argument of the fellow scholars that humanitarian intervention is unlawful. On the same position, Phillip L. Robert argues that there is a very large gap between good intention of interveners and the carrying out of an operation. Many reasons for this one being that an army is a blunt instrument for carrying out an act of charity and many good intentions become lost in the fog of war.⁶

² Simon Chesterman, 2003, *just War or Just Peace, Humanitarian intervention and international law*, New York: Oxford University Press, P. 39.

³ Enabulele, A.O, 2010, Humanitarian intervention and territorial sovereignty: the dilemma of two strange bedfellows, *The International Journal of Human Rights*, Vol. 14, No. 3, p. 407–424.

⁴ Enabulele A.O, 2010, Humanitarian intervention and territorial sovereignty: the dilemma of two strange bedfellows, *The International Journal of Human Rights*, Vol. 14, No. 3, p. 407–424.

⁵ Antonio Tanca, 1993, *Foreign Armed Intervention in Internal Conflict*, Netherlands: Martinus Nijhoff Publishers, p.5.

⁶ Phillip L. Robert, 1996, *Humanitarian Intervention Just Wars Vs. Pacifism*, Maryland: Rowman & Littlefield Publishers Inc., p.3.

On the other hand, authors like Holzgrefe⁷ opines that if military intervention is not directed towards a state's integrity and independence, then such an intervention is not unlawful in terms of article 2(4). And so his position with regard to the topic is that humanitarian intervention is legal under international law when it does not infringe the integrity and independence of a certain state. Furthermore, Michael Werlzer holds a similar view with regard to the legality of humanitarian intervention. According to Michael Werlzer,⁸ when a state so oppresses its people to the point that they are unable to resist, then such a state gives up clear right to sovereignty. Michael Whelzer stated the theories of humanitarian intervention. He explained that intervention is morally permitted but also morally required. Martha Finnermore⁹ wrote about the changes to military intervention and the process that have brought about those changes. Stating these changes, she agreed with Michael that humanitarian intervention has taken a new shape and that it can now be condemned under international law.

It is clear from the available literature that military intervention is welcome to protect human rights, but the question whether military intervention that does not form part of the exceptions under the UN charter is lawful or whether it can be condoned under certain circumstances still remain to be answered. The author seeks to look at the principles of intervention in order to answer the foregoing questions. The paper will therefore provide an in-depth discussion on whether humanitarian intervention forms part of the prohibited force or whether it is an exception. The paper analyses the legality of unauthorized humanitarian intervention and explores the challenges thereto. It will consider both international law and customary law with regard to the matter.

Unlike other volumes on this topic, this paper focuses on the recent cases of intervention in order to shed more light on the topic. The research analyses the challenges that came with these cases and their contributions to topic of humanitarian intervention. The paper will focus on Ivory Coast

⁷ Holzgrefe J.L., 2003, Humanitarian Intervention in debate, in Holzgrefe J.L. and Keohane O. Ed, 2003, *Humanitarian Intervention Ethical, Legal, and political dilemma*, New York: Cambridge University Press, P. 37.

⁸ Michael Welzer, 1977, *Just and Unjust Wars*, New York: Basic Books, p.89.

⁹ Martha Finnermore, 2004, *The Purpose Of Intervention In Changing Believes About The Use Of Force*, New York: Cornell University Press, p.19.

being the latest case of unauthorized military intervention and a comparative study of the case of Ivory Coast and past cases such as Kosovo, Somalia, and Rwanda will be made

Research Methodology

The way in which the research was conducted is through an in-depth analysis of all available literature on this topic. The author conducted an analysis of all the relevant materials on the topic as well as international law instruments. The author also had discussions with fellow legal scholars when it was necessary.

CHAPTER 1

Humanitarian intervention under a microscope

1.1 Introduction

With all the war that is currently taking place in the world and the involvement of other states in such wars, one needs to distinguish whether such wars fall within the definition of military intervention for humanitarian purposes. The starting point is the definition of what constitutes humanitarian intervention. This is essential because not all forms of intervention are classified as humanitarian intervention. The purpose of this chapter is to give a definition of humanitarian intervention and to distinguish humanitarian intervention from mere responsibility to protect. The chapter also aims at giving a background study of humanitarian intervention by stating the challenges thereto, as well as answering the question whether there is a duty upon states to intervene militarily in affairs of another state.

1.2 Military intervention defined

Military intervention is when a state or group of states or an international organisation such as the UN deploys its military troops and tools in a certain state without that state's consent (receiving state) in order to promote and protect human rights that are being violated. It is a range of practical activities which involves the use of force in a state in order to restrain and limit the violence in accordance with norms set out in international humanitarian law, refugee law and human rights law. In the words of Luis B. Sohn and Thomas Buergenthal:

“Humanitarian intervention can be defined as the reliance upon force for the justifiable purpose of protecting the inhabitants of another state from treatment which is so arbitrary and persistently abusive as to exceed the limits of that authority within which the sovereign is presumed to act with reason and justice”.¹⁰

From this definition it can be deduced that anarchy and misrule are considered as grounds for intervention. Another state can step in as policeman in order to control and put to an end the gross human rights violations that are taking place within that state. Thus, humanitarian

¹⁰ Luis B. Sohn and Thomas Buergenthal, 1973, *International Law and the Protection of Human Rights*, New York: The Bobbs – Merrill Company INC, P. 204.

intervention refers to the threat or use of force across state borders by a state or group thereof with the intention of promoting human rights and ending the human right violations of the individuals other than its own nationals without the permission of the state within whose territory force is applied.¹¹

It is the use of armed forces in operations that are intended to resolve the conflict once and for all.¹² It is also when a state or an organisation deploys its troops into another states which is directed at ceasing the activities within that state that are abusing human rights and to stop the unrest situation in that state. Military intervention or humanitarian intervention can be by one state or a group of states or an international organisation such as NATO without the authorisation of the Security Council¹³. It can also be done with the authorisation of the Security Council and this is known as collective intervention.

Military intervention is sometimes referred to as humanitarian intervention, in that it is also a way of humanitarian intervention because the intervention is for humanitarian purposes. Thus, it is justifiable use of force for the purpose of protecting the inhabitants of another state from treatment so arbitrary and persistently abusive as to exceed the limits within which the sovereign is presumed to act with reason and justice.¹⁴ Humanitarian intervention although it is a broad term and it includes many types of intervention, e.g. Red Cross, for purposes of this research is narrowed solely to military intervention. Similarly, the term intervention although it includes a portion of political, economic and military action of one state over another state, for purposes of this research merely refers to military intervention. Therefore humanitarian intervention means: the threat or use of force by a state or a group thereof or an international organisation which is

¹¹ Holzgrefe J.L. and Robert O. Keohane, 2003, *Humanitarian Intervention: Ethical, Legal and political Dilemmas*, New York: Cambridge University Press, p. 9.

¹² Charles (Chip) Hauss, 2003, not titled, available from: [www.beyondinteractibility.org/essay/..](http://www.beyondinteractibility.org/essay/) (accessed on 05 July 2011)

¹³ What is known as unilateral intervention

¹⁴ James Pattison, 2008, who's Responsibility to Protect? The Duties of Humanitarian Intervention, *Journal of Military Ethics*, Vol. 7, No. 4, p. 262-283.

aimed at defending the nationals of the target state from the human rights violations.¹⁵ So, military intervention entails the use of force by a state or a group of states for the purpose of protecting the nationals of the target state from the violation and the deprivation of valuable human rights whether or not it is authorised by the needy state or international community.¹⁶

Military intervention is aimed at protecting the lives and dignity of the receiving state's nationals in armed conflict and to make sure that these people's political leaders respect these norms. It should not be mistaken with instance where a state intervenes to rescue its own nationals¹⁷ in that state. Thus, the intervention by states for purposes of rescuing their own nationals is not military intervention for humanitarian purposes or humanitarian intervention.¹⁸ Similarly, where a non-government organisation acts outside their boarder, it does not fall within the scope of humanitarian intervention. The use of force on request from the legitimate government on whose territory the intervention takes place, does not qualify as intervention in the legal sense, but is lawful "humanitarian assistance". How can it be assessed if it is military intervention? Who assesses this? Should it be regarded as humanitarian intervention by the receiving state or the international community or the state giving it for such view to qualify as humanitarian intervention? In other words, whose view is of importance when it comes to the determination of whether a certain intervention qualifies as humanitarian or not?

¹⁵ Sean D Murphy, 1996, *Humanitarian Intervention, the United Nations in an evolving world order, volume 21, procedural aspects and international law series*, Philadelphia: University of Pennsylvania Press, p. 10.

¹⁶ Sean D. Murphy, 1996, *Humanitarian Intervention, the United Nations in an evolving world order, volume 21, procedural aspects and international law series*, Philadelphia: University of Pennsylvania Press, p. 4.

¹⁷ So-called "Rescue operations" – i.e. intervention in the case of rescue operations there is a legitimate bond between the intervening state(s) and its citizens abroad to rescue nationals of the intervening state(s) abroad should be treated as a concept distinct from humanitarian intervention. Jens Elo Rytter, 2001, Humanitarian Intervention without the Security Council: From San Francisco to Kosovo – and Beyond, *Nordic Journal of International Law*, vol 70, issue1/2, p. 121-16.

¹⁸ Ibid

1.3 Distinction between humanitarian intervention and a mere use of force

It is of utmost importance that a distinction be drawn between humanitarian intervention and pure use of force. The above contention follows because many times humanitarian intervention has been grossly abused and mistaken for pure political reason for the usage of force. There have been so many cases of mixed motives on the part of governments who have claimed to be engaging solely in humanitarian efforts. Interveners use force and describe it humanitarian intervention even when there is no humanitarian element in it. It undermines the legitimacy of humanitarian intervention when states misuse humanitarian intervention. For instance, NATO used the term humanitarian to bomb Kosovo in 1999 although it did not have the necessary authorization. It is then against this background that a need has emerged for a distinction to be drawn between intervention for humanitarian purposes and mere use of force. Humanitarian intervention should not be used to achieve agendas that have nothing to do with the very clearly defined objectives in the Geneva Convention.¹⁹ This convention recognises the intervention for humanitarian purposes as it sets out inter alia how civilians should be treated by the occupying power. It also set out how the intervening state should behave by for instance prohibiting attacks on “objects indispensable for the survival of the civilian population.”²⁰

Humanitarian intervention and the mere use of force are two different things. Although humanitarian intervention involves the use of force, as stated above, humanitarian intervention is aimed at protecting the rights of the civilian in another state who are experiencing gross human rights violation. A mere intervention will for instance be for political reasons whereby a state retaliates on a previous attack by that state or for reasons relating to its own interest for instance to protect its national security.

1.4 Challenges to military intervention

There is a moral distress vis-à-vis the use of force to end gross human rights violation. The

¹⁹ The Geneva Convention for the Protection of Civilians persons in times of War of August 12 1949

²⁰ Article 54.2 of protocol 1 of the Geneva convention

problem is the use of war to end war. Even from a religious, Christian point of view, the Bible says you cannot fight evil with another evil. So the ability of military force to achieve a successful and just long-term outcome is a bit worrisome. Sometimes military intervention can lead to more war for instance the situation in Somalia and Kosovo where humanitarian intervention resulted in more bloodshed. Another challenge that military intervention is faced with is the legitimacy of such intervention in other states. The complexities of humanitarian disasters dictate that, while the impulse to save people in danger may be simple, the act of rescue is not. Actions may, in fact almost certainly have unintended consequences. At times, they may end up harming some of the very people they were intended to help.

1.5 Is there a duty to intervene?

The most fundamental norms of human rights and international humanitarian law are now considered obligations towards the international community as a whole (*erga omnes*)²¹, But is anybody/state obliged with such a duty? Is humanitarian intervention a moral duty or a legal right to intervene? It is true that international community has a responsibility to protect these citizens by undertaking humanitarian intervention. But is there a particular state or organisation entrusted with this obligation to intervene whenever there is a crisis for human rights protection? There is a duty of charity to intervene.²² The UN has a duty to intervene in extreme cases in order to promote peace and security as this is one of the aims and purposes of the UN. Under chapter VII of the UN charter, the international security is entrusted in the Security Council with sweeping powers to act as a guardian of the general interest in the maintenance of world peace. The UN Security Council can ascertain occurrence of threat to peace and violation of peace and aggression.

Is there a right of humanitarian intervention by individual states? Most authors are of the opinion that, there currently exists an unassigned duty to intervene which falls on the international

²¹ Jens Elo Rytter, 2001, *Humanitarian Intervention without the Security Council: From San Francisco to Kosovo – and Beyond*, *Nordic Journal of International Law*, vol 70, issue 1/2, p. 121-16.

²² Phillip L. Robert, 1996, *Humanitarian Intervention Just Wars Vs Pacifism*, Maryland: Rowman & Littlefield Publishers Inc., p.15.

community in general but no one in particular.²³ It cannot be morally demanded of any particular state to intervene. States have full autonomy to decide whether to intervene or not and to choose where to intervene and where not to intervene. It is entirely up to the state to choose where it wants to intervene. From this one can almost say the decision to intervene depends on the motives of the intervenor although they would state that it is for humanitarian purposes, they would be carrying out a humanitarian mission while indirectly protecting their interests like that oil. However, although a crisis in a state can put a strain on the resources of neighboring states the reason for intervention should be humanitarian concern; in other words, it should not be for a state's own national interest or the national security, but for the nationals of the target state only.

Increasing humanitarian intervention or interference by major powers might trigger the question of motives. What are their motives for such intervention? But then the question that most ask, why does military intervention occur more in some countries than others? The interveners are highly selective and inequitable which creates an impression that most armed conflict and their sufferings are forgotten. For instance, the Rwandan nation seemed to have been forgotten when everybody turned a blind eye on their sufferings. Nobody came to their rescue when they needed it most and close to a million lives were lost.²⁴ It is not possible to separate the humanitarian intervention from the political grounds for intervention and it is also impossible to assure the complete disinterestedness of the intervening state.

1.6 Conclusion

Humanitarian intervention is a broad term. It encompasses among other things, the use of force to protect and promote human rights. Thus, humanitarian intervention entails when a state deploys its troops in another state for the protection of human rights of the nationals of another state. It has been stated above that anarchy and misrule warrants for humanitarian intervention. Military intervention for any other reason other than humanitarian does not fall under the scope of humanitarian intervention. If an intervention does not a humanitarian element in it, then it

²³ James Pattison, 2008, who's Responsibility to Protect? The Duties of Humanitarian Intervention, *Journal of Military Ethics*, Vol. 7, No. 4, 2 p. 62-283.

²⁴ Sean D Murphy, 1996, *Humanitarian Intervention, the United Nations in an evolving world order, volume 21, procedural aspects and international law series*, Philadelphia: University of Pennsylvania Press, p. 243.

does not constitute humanitarian intervention. It also follows that intervention with prior Security Council authorisation is not necessarily military intervention per se but falls within the ambit of the responsibility to protect which is placed on the international community as a whole. Military intervention has challenges of its own which mainly arise from the fact that the use of force is a blunt instrument for the achievement of humanitarian results because it often results in more damage than anticipated. There is no responsibility or any right on any individual state to offer humanitarian assistance to any state. Every state has a right to choose whether or not to intervene. The UN however has a duty to intervene.

CHAPTER 2

The legality and the legitimacy of military

2.1 Introduction

Whilst the legality question concerns the lawfulness of military intervention under international law both under treaty law and customary international law, the legitimacy relates to the circumstances and factors that necessitates and justify military intervention. In order to determine the legality of unilateral humanitarian intervention, one should consider treaties such as the UN charter and the customary international law. The purpose of this chapter is to illustrate the circumstances under which military intervention is deemed lawful under international law. The chapter will also reveal the circumstances when military intervention in deemed legitimate. Thus, the chapter will show the requirements of the legitimacy of military intervention.

2.2 Customary international law

Custom is the oldest for new customary law to emerge. In the case of **North Sea Continental Shelf Cases**,²⁵ the ICJ stated that first the norm must be supported by general state practice, i.e. the actual conduct of states. Second, this practice must express the legal opinion (opinion juris) of states that the actual conduct corresponds to a legal duty or entitlement. Form this requirement, unilateral intervention should be a practice by states for it to convert into a custom and should form part of opinion juris of states. Under Customary international law, state practice has established the right of humanitarian intervention and this right was neither weakened nor established by the creation of the UN Charter. A custom emerge in vast majority of states engaging in a contrary practice and crucially withdrawing their opinion juris.²⁶ Humanitarian intervention can only be legal if the right of unilateral humanitarian intervention had somehow achieved the status of Jus cogens and thus overridden conflicting treaty provisions. So does state practice and opinion juris indicated a change to allow for humanitarian intervention in the absence Security Council's authorization? Although state practice on humanitarian intervention is common over the past years, it cannot be said to have become a customary international law

²⁵ ICJ Reports 1969, para. 77

²⁶ Nicholas j. Wheeler, 2000, *Saving Strangers: Humanitarian Intervention in the International Society*, New York: Oxford University Press p.47.

because of the fact that state do not regard it as lawful. Unilateral humanitarian intervention still did not emerge as a custom under customary international law.

2.3 Concept of Just wars

The classical origins of what came to be known as humanitarian intervention lie in the emergence of the substantive doctrine of just war in the middle ages. It achieved its popularity through the work of Hugo Grotius (1583-1648).²⁷ During these years international law contained no general prohibition on warfare and other forms of use of force, but there was among states a sense of necessity to justify the use of force on moral and political grounds, in accordance, notably, with the tradition of just war. On this background, a doctrine of intervention for humanity emerged in legal theory, according to which states had the right to intervene by force “in cases where a state maltreats its subjects in a manner which shocks the conscience of mankind.”²⁸ This is war that has legitimate authority, just cause, last resort, proportionality and reasonable prospect of success.²⁹ The war should not make the nationals direct objects of the attack.³⁰ This means that military intervention should not be aimed at the innocent civilians.

2.4 The UN Charter and the ban on the use of force

The UN Charter weighs heavily against the use of force. Article 2(4) codifies the principle of non-intervention from foreign powers and grants upon all members of the United Nations the privilege of state sovereignty associated with freedom from threats of outside force. Article 2(4) of the UN charter provides:

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

²⁷ Simon Chesterman, 2003, *just War or Just Peace, Humanitarian intervention and international law*, New York: Oxford University Press, P. 9.

²⁸ Phillip L. Robert, 1996, *Humanitarian Intervention Just Wars Vs Pacifism*, Maryland: Rowman & Littlefield Publishers Inc. p. 45.

²⁹ Just wars theory

³⁰ Alexander Moseley and Richard Norman, 2002, *Human Rights and Military intervention*, Burlington: Ashgate publishing Limited, p. 7.

This article can be interpreted to prohibit armed conflict, and also other forms of forcible self help, reprisal, protection of nationals and humanitarian intervention. The UN tried to eliminate war, threats to peace and acts of aggression by creating an organisation whose friendly relations would be based on the respect of the principle of equal rights and self-determination of the people and the obligation of its members to refrain from the threat of force against territorial integrity or political independence of any state. Military intervention involves the use of force; it therefore contrary to the imperative norm of the UN Charter.

International law has banned the use of force against the territorial integrity of another state except in the manner and under the circumstances permitted by the law. These permissible limits are contained in the Charter of the United Nations. In terms of the UN charter, force could only be used in self defence under article 51 or for enforcement of collective measures under Chapter VII. Article 51 codifies the right of individual or collective self-defence in case of an armed attack against the state. It is evident from this provision of the UN Charter that unilateral use of force is not in harmony with the UN charter. The UN resolutions also states that nations are prohibited from engaging in offensive military action against sovereign members without sanctions from the Security Council.³¹ The United States of America in leading NATO alliances disregarded this authority and took it upon them to intervene in Kosovo conflict.

In terms of the provisions of article 51, which is enshrined in Chapter VII of the Charter, one State may also employ armed force lawfully against another in self-defence, but only until the Security Council has taken action.³² The right to use armed force in self-defense has been interpreted differently by various authors but will be used here in the broader sense to also include cases where armed force is applied to prevent an imminent armed attack (anticipated self-defence) and to rescue a country's own nationals in peril abroad. The particular legal problem arises, thus, when moral and humanitarian concerns call for action, but none of the above-mentioned justifications for the use of force are available for instance what happened in

³¹ Charles Knight, 2001, *what justifies military intervention*, available from www.beyondinteractivity.org/essay/. (accessed on 05 July 2011)

³² John Dugard, 2005, *International Law: A South African Perspective*, Cape Town: Juta & CO Ltd, p 205.

Rwanda, when the Tutsi tribe was massacred. The situation demanded immediate interference by the international community in order to prevent this genocide. However due to the doctrine of non-intervention no state or organisation could come the rescue of the Rwandan people. The situation in Rwanda did not fall under the exceptions to the use of force. France was willing to intervene but its actions were delayed as it could not intervene without a Security Council resolution authorising it intervene in Rwanda.

The decisive question, therefore, is whether Article 2(4) should be interpreted as prohibiting all use of force in international relations which is not covered by the two explicit exceptions in the Charter, or as allowing for certain implicit exceptions, in case of humanitarian intervention without authorisation from the Security Council? The UN charter provide... *against the territorial integrity or political independence of any state...* The wording of article 2(4) suggests that any use of force that is not directed against territorial integrity or political independence of a state and is consistent with the article 1 of the charter is also legal.³³ Since the protection of human rights and the control of international conflict is also an important purpose of the UN Charter, It can therefore be argued that humanitarian intervention that is prohibited is the one that is directed against territorial integrity or political independence of any state. Article 2(4) of the UN charter should thus be interpreted to allow for military intervention which is justified

The aim of the drafters of the UN charter was to provide a more complete effective and most importantly collectively security system that provided security for the world.³⁴ To this end the Security Council is the organ responsible for the maintenance of international peace. In terms of Article 2(4), military intervention is not directed towards the integrity and independence of another state, then that intervention is lawful.³⁵ Unilateral intervention cannot be contained in the UN charter norms which have served the framework of international relations for the past half

³³ Simon Chesterman, 2003, *just War or Just Peace, Humanitarian intervention and international law*, New York: Oxford University Press, P. 52.

³⁴ Hilaire McCoubrey, Nigel D. White, 1992, *International Law and Armed Conflict*, Hong Kong: Dartmouth, p.30.

³⁵ Holzgrefe J.L., 2003, Humanitarian Intervention in debate, in Holzgrefe J.L. and Keohane O., 2003, *Humanitarian Intervention Ethical, Legal, and political dilemma*, New York: Cambridge University Press, P. 37.

century as it challenges the root principle of the doctrine of formal equality of states.³⁶ However, under article 39 of the UN charter, state sovereignty must be surrendered in the pursuit of general interest even when the situation concerned is deemed to be purely internal matter. Thus, the Security Council can act as a protective arm of the world community even against the will of the individual state concerned and disregarding a state's sovereignty, whenever it ascertains the existence of threat to peace.³⁷

2.5 Is humanitarian intervention prohibited under international law?

The UN charter prohibits the use of force between states, without any exceptions other than those explicitly provided for in the Charter, thus also prohibiting humanitarian intervention without a Security Council mandate. Consequently, although the drafters of the Charter took no explicit stand on the issue of humanitarian intervention, it must be presumed that, even assuming that a right of humanitarian intervention had been established in customary international law prior to the Charter, this right did not survive the adoption of the Charter.³⁸ From the provisions of the UN charter, it can be inferred that, the use of armed intervention on humanitarian grounds is illegal; the only possible exception being self defense and under direct authorization from the United Nations under Charter Articles 39 and 42.

The International Court of Justice (I.C.J.) has ruled in support of this view in **Nicaragua v. United States**³⁹ in 1986. Nicaragua case considered the question whether there were legal exceptions to the non intervention rule and the court ruled that the principle of non-use of force had attained the status of both a treaty and custom-based international law. Such a principle could not be violated via the use of force for the humanitarian considerations.⁴⁰ The United

³⁶ Tom J. Farer, 2003, Humanitarian Intervention before and after 9/11: Legality and Legitimacy, in Holzgrefe J.L. and Keohane O., 2003, *Humanitarian Intervention Ethical, Legal, and political dilemma*, New York: Cambridge University Press, P. 82.

³⁷ Antonio Tanca, 1993, *Foreign Armed Intervention in Internal Conflict*, Netherlands: Martinus Nijhoff Publishers, p.5.

³⁸ Malcolm N. Shaw, 2008, *International Law*, New York: Cambridge University Press: p. 432.

³⁹ ICJ Reports 1986

⁴⁰ Brien J. O.,2001, *International Law*, London, Cavendish Publishing Limited, p.691.

States cited to justify their intervention in Nicaragua the court held that “while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect.” The international court of justice in the **Nicaragua Case** regarded the provisions of the charter article 2(4) as dynamic rather than fixed and thus capable of change over through state practice. It stated that the UN charter by no means covers the whole area of regulation of the use of force in international relations.⁴¹ It was stated that it would involve a fundamental modification of customary international law and the principle of non intervention for which there was no support in state practice. This ruling can be interpreted as showing that the I.C.J. did not support the use of force predicated upon humanitarian grounds. Evidently, the decision strengthened the authority behind the principle of nonintervention and behind a prohibitive interpretation of Article 2(4).

The UN Charter and customary international law all prohibit intervention. However, past experiences have shown a practice contrary to this. Does this mean that when the intervention was based on humanitarian purposes it is excluded from the requirement of authorisation? The process of deciding to use deadly force violates all our notions of due process of justice.⁴² The legality of humanitarian intervention, with and without Security Council authorization, has been called into question. Some authors argue that the prohibition is against the use of force that is directed against territorial integrity or political independence of a state. It can therefore be argued that, humanitarian intervention does not aim at depriving the state of its territorial or political attributes but rather to enhance them.⁴³ One of the reasons why humanitarian intervention is still alive although the charter prohibits the use of force can be attributed to the fact that it is consistent with the purpose of the charter to protect and to promote fundamental freedoms and human rights. Argument is that unauthorised humanitarian intervention is compatible with Article 2(4), since humanitarian intervention is not “inconsistent with the Purposes of the United

⁴¹ Christine Gray, 2000, *International Law and the use of Force*, New York: Oxford University Press, p.4.

⁴² *ibid*

⁴³ Holzgrefe J.L., 2003, Humanitarian Intervention in debate, in Holzgrefe J.L. and Keohane O. Ed, 2003, *Humanitarian Intervention Ethical, Legal, and political dilemma*, New York: Cambridge University Press, P. 37.

Nations”, but indeed serves one of its fundamental purposes, the promotion of respect for human rights in Article 1(3) of the Charter⁴⁴. The argument in favour of humanitarian intervention is that there is a loophole in the UN Charter in that would support the use of force for humanitarian purpose. This is because; humanitarian intervention does not violate the charter as it does not violate the territorial integrity or political independence. Another argument in favour of humanitarian intervention is that it is not contrary to the purpose of the UN charter when considering the objectives related to human rights and freedom listed in article 1(3).⁴⁵

On the other hand, military intervention violates a state’s integrity and independence as the deployment of military personnel and equipment across a border at times suppress the political will of the government of the day in the receiving state.⁴⁶ It has the effect of changing the political structure through external means; it undermines the rights to self-determination.⁴⁷ Considering that armed intervention is synonymous with aggression and as such it is contrary to the basic principles on which peaceful international co-operation between states should be built, intervention is unlawful and does not make the list of the exceptions.⁴⁸ **Corfu Channel Case**⁴⁹ held that defects in international organisation cannot justify non compliance with the principle of non-use of force. Many commentators argued that during the cold war the interpretation of article 2(4) depended on the functioning of the UN collective security system and therefore the inability of the security council to act because the veto meant that article 2(4) should be read to

⁴⁴ Article 1 (3) of the UN Charter states that the purpose of the UN Charter *inter alia* is “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.

⁴⁵ Harhoff Frederik, 2001, Unauthorised Humanitarian Intervention- Armed violence in the name of Humanity, *Nordic Journal of International Law*, vol 70, issue ½, p. 65-119.

⁴⁶ Sean D Murphy, 1996, *at al*, p. 71.

⁴⁷ Luis B. Sohn and Thomas Buergenthal, 1973, *International Law and the Protection of Human Rights*, New York: The Bobbs – Merrill Company INC., p. 228.

⁴⁸ Harhoff Frederik, 2001, Unauthorised Humanitarian Intervention- Armed violence in the name of Humanity, *Nordic Journal of International Law*, vol 70, issue ½, p. 65-119.

⁴⁹ 1949 ICJ rep 4

allow the use of force to further world public order and purpose of the UN.⁵⁰ In the **Corfu channel case**, after two British ships were sunk by mines laid out by Albania in its Corfu Channel, the United Kingdom intervened with warships to sweep the mines, alleging a right of intervention to secure evidence for a claim for damages and a right of forcible self-help. The Court rejected the allegations. This judgment supports the view that the prohibition on the use of force is a norm independent of the effectiveness otherwise of the international organisation and also support the argument that article 2(4) is somehow limited.⁵¹

But where do we then draw the line between lawful interventions and illegal use of force so as to eliminate the risk of abuse? The legality of unilateral humanitarian intervention is very controversial topic. Opinions vary from authors to authors. The author of this paper contends that although unilateral humanitarian intervention is unlawful, it can be condoned by the UN if it was justified, if the intentions of the interveners were purely humanitarian and it successfully carried out its intended purpose. This view is on the basis that the NATO's actions in Kosovo were eventually condoned. By the system's condoning of NATO's resort to force without prior Security Council authorization, it is evident that unilateral humanitarian intervention is somehow allowed and may evolve into a practice in the future if it is justified.

The other mainstream theory in favour of the legitimacy of humanitarian interventions asserts that Article 2(4) of the UN Treaty must be interpreted so as to imply that the prohibition against the use of armed force does not outlaw every use of force per se, but merely proscribes the specifically unlawful use or threat of armed force aimed at subverting “the territorial integrity or political independence of any State”, such as aggression or conquest.⁵² The purpose and the context of the action are always decisive in respect of its legitimacy. The test to be made, in other words, is to assess each case on a contextual basis by taking into account the specific motive for the use of force and the necessity of taking immediate armed action rather than just accepting

⁵⁰ Christine Gray, 2000, *International Law and the use of Force*, New York: Oxford University Press, p.25.

⁵¹ Hilaire McCoubrey, Nigel D. White, 1992, *International Law and Armed Conflict*, Hong Kong: Dartmouth, p.32.

⁵² Luis B. Sohn and Thomas Buergenthal, 1973, *International Law and the Protection of Human Rights*, New York: The Bobbs – Merrill Company INC., p. 208.

continued violence and proceeding, perhaps to no avail, with peaceful means to achieve the purpose.

2.6 Authorisation

There must be authority to intervene. Authority to intervene is what makes military intervention lawful. Take notice, intervention here is the key word. Meaning it is still an intervention but however it is lawful as per international law. So what is the nature of authority that is needed to make military intervention legal? There are two types of authority that allows for intervention. Firstly, there is what is referred to as indirect authorisation, which results from the state being a member of an organisation such as UN, which allows for the UN to intervene in its affairs without its authorisation. The second authorisation occurs when a state is not a member of UN, and here the UN Security Council is required to give authorisation to a body for instance the NATO in order for it to be able to apply military intervention to a particular state. This is authorisation from the UN Security Council.⁵³ For instance Yugoslavia was not part of the treaty which authorises them to allies. For this, the US also needed to get the UN Security Council's authorisation for them to intervene in Kosovo. However USA and NATO did not have the Security Council's permission to proceed with their attack in Kosovo. NATO claimed that their intervention in Kosovo was based on humanitarian purposes and so this justified their military intervention against Kosovo.

2.7 UN Charter Authorisation

The Charter is intended to permit action by states when sanctioned by the UN Security Council.⁵⁴ Chapter VII, specifically Articles 39 and 42 discuss threats to international peace and possible remedies. Article 39 asserts: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41⁵⁵ and 42, to maintain or

⁵³ Nicholas j. Wheeler, 2000, *Saving Strangers: Humanitarian Intervention in the International Society*, New York: Oxford University Press p7.

⁵⁴ Brownlie Ian, (2003), *Principles of Public International Law, 6th Ed*, Ney York, oxford University press, p. 203.

⁵⁵ Article 41 empowers the security Council to authorise member states to apply economic sanctions

restore international peace and security.” This suggests that a determination of a threat to peace, breach of peace or act of aggression must be made before the Security Council can decide what measures should be taken. Article 42 on the other hand states that if the economic sanction under article 41 proves to be fruitless, the Security Council may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security. Article 42 therefore authorizes the use of force to restore international peace and security under specific circumstances. In conjunction, Articles 39 and 42 provide the opportunity for the Security Council to determine a situation either contained within the borders of one state to be a threat to international peace and security, and in doing so, the Security Council may justify an armed intervention. On the bases of these Articles of the U.N. Charter there is provision for the use of force for humanitarian reasons.

The provisions of Chapter VII outline the circumstance under which the Security Council may sanction the use of force. Under Article 39, the Security Council can determine “the existence of any threat to the peace, breach of the peace, or act of aggression” and decide what measures need to be taken. If peaceful measures fail then the Security Council, acting under Article 42, can sanction more robust measures “as may be necessary to maintain or restore international peace and security.” Article 53, para 1 sets out that the Security Council may utilize regional organisations for enforcement action under its authority, but only at the Council’s authorisation. Onus of proof falls on would-be interveners to convince the Security Council that an intervention is justified.⁵⁶

2.8 Process of Authorisation

The Security Council is the executive body of the UN and is given responsibility for the maintenance of international peace. It is composed 15 members, five permanent members who are

⁵⁶ Vessel David, 2003, *The Lonely Pragmatist: Humanitarian Intervention In An imperfect World*, B.Y.U. *Journal of Public Law Volume 18, Issue 1*, p. 1- 58.

vested with the veto power⁵⁷ and ten non permanent members elected by the general assembly for a term of two years. The Security Council is empowered to take decisions binding on all members of the United Nations.⁵⁸ The Security Council's design attempts to ensure that the world's great powers agree on any use of force. If the Security Council does not come to agreement or sanction such action, then the intervention should not occur. But what happens when the Security Council is preoccupied or at an impasse? Can the world just sit and do nothing to prevent human rights violations? As stated above, an impasse within the UN Security Council does not justify unilateral humanitarian intervention.

The Security Council firstly under chapter VII determines whether the situation constitutes threat to international peace and security. It will then declare that threat to international peace and security exists. Security Council authorisation must be obtained prior to action.⁵⁹ A subsequent endorsement or de facto acceptance from the Security Council does not retroactively provide legality for an otherwise unlawful intervention.⁶⁰ However the Security Council by later condoning the intervention in a way strengthens the legitimacy of such intervention. Unauthorised humanitarian interventions, it appears,⁶¹ have no positive written legal basis in existing international law. That unauthorised humanitarian interventions are currently without any constructive reinforcement in modern-day international law.

Nevertheless, a predicament arises when the Security Council fails to act in the face of gross human rights violations, either because of a political stalemate or a widespread absence of

⁵⁷ The permanent members have in time used their veto power when they perceive that their own interest are at stake, and deprive the security council of much of its effectiveness. John Dugard, 2005, *International Law: A South African Perspective*, Cape Town: Juta & CO Ltd, p. 487.

⁵⁸ Christine Gray, 2000, *International Law and the use of Force*, New York: Oxford University Press, p.20.

⁵⁹ Jens Elo Rytter, 2001, Humanitarian Intervention without the Security Council: From San Francisco to Kosovo – and Beyond, *Nordic Journal of International Law*, vol 70, issue1/2, p. 121-16.

⁶⁰ *ibid*

⁶¹ Frederik Harhoff, 2001, unauthorised Humanitarian Interventions – Armed Violence In The name Of Humanity? *Nordic Journal Of International Law Vol. 70, Issue ½, P. 65–119.*

political will.⁶² In such a situation, a unilateral humanitarian intervention may be the only option available for stopping mass atrocities, even if such interventions remain illegal under the UN Charter and customary international law. Given this predicament, the definition of aggression must preserve international stability⁶³ by maintaining the existing rules on the use of force while, at the same time, allowing the occasional bona fide humanitarian intervention to take place.

Legitimacy of humanitarian intervention

2.9 When is humanitarian intervention justified?

At this point, the most vital question is: In what circumstances is intervention legitimate? When all else fails and a government is either unable to halt internecine violence or, worse, is engaged in killing its own citizens, military action is appropriate, even essential, to save lives and end suffering.⁶⁴ Humanitarian intervention is based on impartiality in that it is to protect and assist people purely on the basis of need alone.⁶⁵ The help given is not because the state giving such help has an interest of some sort in that country that they wish to protect. However this still does not answer the question what justifies military intervention? It has been contended that military intervention should be last resort, after the negotiation failed to come to an agreement.⁶⁶ It is apparent that military intervention is justified when it is for the protection of human rights. Military intervention is justified if it is aimed at helping the civilians by preserving them, their rights, freedoms and lives that were affected before the intervention.⁶⁷ Military intervention for

⁶² Process of authorisation and its defaults veto instead of two third majorities

⁶³ Martha Finnemore, 2004, *The Purpose Of Intervention In Changing Beliefs About The Use Of Force*, New York: Cornell University Press, p.32.

⁶⁴ Judith Gardidam, 2004, *Necessity, Proportionality and use of force by states*, Madrid, Cambridge University press, p.33.

⁶⁵ Hugo slim, not dated, *military intervention to protect human right: the humanitarian agency perspective*, oxford university , UK, available from; <http://www.jharac/articles/a084.htm>, accessed 9 July 2011.

⁶⁶ Charles Knight, 2001, *what justifies military intervention*, available from www.beyondinteractibility.org/essay/. (accessed on 05 July 2011)

⁶⁷ Nicholas j. Wheeler, 2000, *Saving Strangers: Humanitarian Intervention in the International Society*, New York: Oxford University Press p.11.

purposes of self interest e.g. oil cannot be justified even if they claim that it was for humanitarian purposes.

Although unauthorized intervention is prohibited by the charter, it does not give the states the right to treat their own citizens as they wish. To the contrary, most states are signatories to conventions that legally oblige them to respect human rights of their citizens. However the obligation under these treaties cannot really be coercively enforced.⁶⁸ For intervention to be justified there must be within the state in question an immediate threat to human rights particularly a threat of extensive loss of human life. Secondly, intervention must be limited to protecting basic human rights.⁶⁹ Thirdly the action is one that has been taken at the invitation of the government of the territory.⁷⁰ Fourthly, the action is not one taken under the authority of Security Council resolution.

On the other hand, the International commission on intervention and state sovereignty (ICISS) came up with two criteria to answer the legitimate question namely: just cause thresholds which include: ('large scale loss of life' and 'large scale ethnic cleansing') and precautionary principles ('right intention', 'last resort', 'proportional means' and 'reasonable prospects'),⁷¹ arguing that if states committed themselves to these principles, it would be easier to build consensus on how to respond to humanitarian emergencies. These two criterias supports the forgoing considerations which justifies humanitarian intervention. Intervention is justified if there is human suffering and gross human rights violations. This can be in a form of large scale killing in other words genocide. Humanitarian intervention is necessary in cases of genocide. Military intervention is also justified when all efforts to settle peacefully were of no avail. Meaning it should be of the last resort. It should then be carried out for the right intentions being merely humanitarian basis.

⁶⁸ Holzgrefe J.L., 2003, Humanitarian Intervention in debate, in Holzgrefe J.L. and Keohane O., 2003, *Humanitarian Intervention Ethical, Legal, and political dilemma*, New York: Cambridge University Press, P. 39.

⁶⁹ Brien J. O., 2001, *International Law*, London, Cavendish Publishing Limited, p.689.

⁷⁰ Because if the intervening state was invited by another state, and such a state consented to the intervention it amounts to humanitarian mere humanitarian assistance and not intervention.

⁷¹ Enabulele A.O, 2010, Humanitarian intervention and territorial sovereignty: the dilemma of two strange bedfellows, *The International Journal of Human Rights*, Vol. 14, No. 3, p. 407–424.

Moreover, humanitarian intervention should be taken in proportion with the circumstances. The intervenor should assess the circumstance in order to establish how the intervention activities should be carried out. It should not cause more anguish to the people or damage to the land and property than necessary.

The ICISS criteria (just cause thresholds and precautionary principles) to guide decisions about military intervention were intended to fulfill three primary functions. First, in an attempt to avoid any future cases like that of Rwanda, where the world stood aside as 800,000 people were butchered in genocidal violence, the just cause thresholds were intended to create expectations about the circumstances in which the international community primarily the UN Security Council should become engaged in major humanitarian catastrophes, consider intervening with force and constrain permanent members from casting pernicious vetoes for selfish reasons.⁷² Second, responding to a need to avoid future situations like that of Kosovo, where the Security Council was blocked by veto; the criteria provided a pathway for legitimizing intervention not authorized by the Security Council.⁷³ The criteria would both ‘make it more difficult for coalitions of the willing to appropriate the language of humanitarianism for geopolitical and unilateral interventions’ and make the Security Council’s deliberations more transparent. Besides, the genocide convention of 1948 also obliges the signatories to prevent and punish the crimes of Genocide by calling upon the competent organs of the UN to take such actions as they consider appropriate and this right evidently does not establish a right of unauthorized intervention.

2.10 Human rights and military intervention

Human rights are one of the reasons that justify military intervention. The Universal Declaration of Human Rights (UDHR) is the founding document of the law of human rights. Although the UDHR affects customary international law, this document does not impose a positive obligation

⁷² Alex J. Bellamy, 2008, The Responsibility to Protect and the problem of military intervention, *international affairs*, vol.84, issue 4. P. 615-639.

⁷³ Alex J. Bellamy, 2008, The Responsibility to Protect and the problem of military intervention, *international affairs*, vol.84, issue 4. P. 615-639.

on state parties. International law lacks the authority to create obligations that are binding.⁷⁴ The mandate to impose legal obligations upon states was reserved for the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”), which followed twenty-eight years later. These are then the instruments which imposes obligation upon states to promote and protect human rights. So what is really meant by human rights? Human rights are the attributes that are uniform, common to all humans and are deemed worthy of protection.⁷⁵ Can intervention be necessary when other entitlements and privileges are being violated that gives meaning to life?

Do human rights violations justify intervention? The rationale for military intervention is to protect the values that are at stake. Human rights violations necessitates humanitarian intervention when they are on such a large scale and so shocking on the human concise,⁷⁶ this for instance when the government is pressuring or abusing its people which result in the resources of the State being deliberately utilized by a dictator to violate the rights of the very people for whose pursuit of welfare and protection, the State was set up in the first place e.g. what happened in Libya. Since state parties have a duty under the above mentioned conventions not to violate human rights, military intervention is justified when the human rights of members of a particular group of people are being endangered or grossly violated. Looking at this justification, was the bombing in Kosovo justified? Should they have tried to prevent the genocide in Rwanda since there was also gross human rights violation? And more importantly, do human rights constitute an exception to the prohibition against intervention in the UN Charter? It is apparent that military intervention can be condoned if it was not for the pursuant of self interest but for the protection of human rights⁷⁷ e.g. in Kosovo. Military intervention can be justified as humanitarian war. The

⁷⁴ Nicholas j. Wheeler, 2000, *Saving Strangers: Humanitarian Intervention in the International Society*, New York: Oxford University Press p.2.

⁷⁵ Sean D Murphy, 1996, *Humanitarian Intervention, the United Nations in an evolving world order, volume 21, procedural aspects and international law series*, Philadelphia: University of Pennsylvania Press, p. 244.

⁷⁶ James Pattison, 2008, who’s Responsibility to Protect? The Duties of Humanitarian Intervention, *Journal of Military Ethics*, Vol. 7, No. 4, p. 262-283.

⁷⁷ Alexander Moseley and Richard Norman, 2002, *Human Rights and Military intervention*, Burlington: Ashgate publishing Limited, p. 7.

war is justified if it is accompanied by a moral concern for the welfare of humanity. It is also justified when it is responding to the denial of human well-being elsewhere, when it is directed at reducing the suffering and stopping the human rights violation.⁷⁸ Such acts have been noted to include, (1) genocide, ethnic cleansing, war crimes, crimes against humanity, and other atrocities involving loss of life on a massive scale; (2) interference with the delivery of humanitarian relief to endangered civilian populations; and (3) the collapse of civil order entailing substantial loss of life in situations where it is impossible to identify any authority capable of granting consent to international involvement to help restore order.⁷⁹ The accepted view is that it is legitimate intervention if the intervention aims at promoting and protecting universal human rights in a society other than their own. This then provokes the question, to whose rescue should military intervention be offered? Military intervention should be for the aid of the civilian of that state whose are deprived of their human rights. So what about when military intervention is to the assistance of the minority group of people who seceded from the state and to make themselves an independent political community with its own state? The general principle of international law is that a state should not interfere in internal matters of another state.⁸⁰ Under international law, states are prohibited from financing, tolerating and subverting any terrorist or armed activities directed towards the overthrow of the government of another country or involve in the civil conflict in another country. A state in terms of article 2(7) of the UN charter has a right to self determination.

But is military intervention the only means of preventing human rights violations? In Kosovo as controversial and without authorisation as the intervention was they claimed that it was for the protection of human rights. But they failed to intervene in Rwanda for the same reasons where human rights were being violated as well. It is true that military intervention is not the only way

⁷⁸ Frederik Harhoff, 2001, unauthorised Humanitarian Interventions – Armed Violence In The name Of Humanity? *Nordic Journal Of International Law Vol. 70, Issue ½, P.65–119.*

⁷⁹ Jens Elo Rytter, 2001, Humanitarian Intervention without the Security Council: From San Francisco to Kosovo – and Beyond, *Nordic Journal of International Law, vol 70, issue1/2, p.121-16.*

⁸⁰ Article 2(7) of the UN charter

of intervening but if all attempts of negotiation have failed, force may be the only way of bringing order.

2.11 Conclusion

Military intervention emerged from the doctrine of just war. Although the practice of military intervention (without Prior UN authorisation) has increased over the years, it has not qualified as *jus cogen* under customary international law yet, thus making it unlawful as far as customary international law is concerned. In terms of the UN charter, humanitarian intervention does not form part of the exception to the use of force. It is therefore unlawful both under customary international law and the UN charter. For humanitarian intervention to be lawful, it should be authorised by the Security Council after the Security Council has determined that the concerned situation is a threat to international peace and security and passed a resolution allowing for the use of force. However, humanitarian intervention is legitimate if it is directed toward the protection of human rights. A legitimate intervention should be carried out in proportionate to the circumstances and it should not cause more harm to the people and to the land than necessary. It should be purely for humanitarian purposes for it to be justified. It then follows that when humanitarian intervention is legitimate it may be condoned by the UN.

CHAPTER 3

The dilemma of sovereignty and humanitarian intervention

3.1 Introduction

The doctrine of non-intervention is based on the premise that each state has a right to sovereignty and all sovereign states are equal. This chapter will therefore discuss the impact of military intervention on the right to sovereignty of a state. Furthermore, the chapter will look at the doctrine of sovereign equality and military intervention. Finally, the chapter will also discuss the view in chapter 2 that violation of human rights justifies military intervention and try to answer the question of which between human rights and the right to sovereignty override the other when a choice has to be made between the two rights.

3.2 Principle of territorial sovereignty

Under international law, the principle of sovereignty is regarded as inviolable. This principle is part of both customary international law and treaty law. States within their territories have authority to control events, properties and persons therein.⁸¹ They have supreme and absolute authority within their jurisdictions.⁸² Consequently, the way a state conducts itself within its territory is not the business of any other state, and so, interference from other states, would amount to an outright infringement on the territorial sovereignty of that State. The prohibition against intervention is enshrined in the UN Charter article 2 (7). The primacy of non intervention and the respect for sovereignty enshrined in the UN charter article 2 (7), rules out the intervention with regard to internal affairs for another country. Full observance of the principle of non intervention of the state in the internal and external affairs of other states is essential to the fulfillment of the purpose and the principle of the UN.

⁸¹ Enabulele A.O, 2010, Humanitarian intervention and territorial sovereignty: the dilemma of two strange bedfellows, *The International Journal of Human Rights*, Vol. 14, No. 3, p. 407–424.

⁸² For instance as stated in our Namibian constitution under article 1 (2), gives Namibia its sovereign right that no other state shall intervene in matters of the state.

The fundamental nature of sovereignty is that the state exercises final and absolute political authority in the political jurisdiction, with “authority” understood as the right to rule.⁸³ In recognizing that the fulfillment of the principle of self-determination the general assembly in its declaration on the granting of independence to colonial countries and peoples contained in its resolution⁸⁴ that all people have an inalienable right to complete freedom, the exercise sovereignty and integrity of their national territory and that by virtue of that right they feely determine their political status and freely pursue their economic social and cultural development.

The prohibition against intervention cannot be relaxed because it tempers with the principle of sovereignty. Armed intervention both direct and indirect forms of interference threatens the sovereign personality and the political independence of the state.⁸⁵ Sovereignty has in time been a shield to protect a state from possible armed conflict. States under international law are prohibited from intervening in the domestic affairs of another state unless the legitimate government of that state request for such aid. The only exception to intervention is self defense to an aggressive act by that state. Is sovereignty sufficient to prevent intervention? All states are entitled to choose without duress or coercion their own political economic and social institution.⁸⁶ In the light of the foregoing consideration, no state has the right to intervene directly or indirectly for any reason whatever in the external or internal affairs of any other state. Consequently, armed intervention or attempted threats against the personality of the state or against its political, economic, cultural elements are condemned.⁸⁷

⁸³ Shaun Narine, 2005, Humanitarian Intervention and the Question of Sovereignty: The Case of ASEAN, *Perspectives on Global Development and Technology*, Volume 4, issue 3-4, p. 465-485.

⁸⁴ Resolution 1514 *4 14 December 1960

⁸⁵ Luis B. Sohn and Thomas Buergenthal, 1973, *International Law and the Protection of Human Rights*, New York: The Bobbs – Merrill Company INC., p. 208.

⁸⁶ Sean D. Murphy, 2007, Criminalizing Humanitarian Intervention, *Western Reserve Journal of International Law*, Vol 23, issue 3, p. 341-377.

⁸⁷ Nicholas j. Wheeler, 2000, *Saving Strangers: Humanitarian Intervention in the International Society*, New York: Oxford University Press p.2.

Mindful that the violation of the principle of non intervention poses threat to the independence and freedom of another state, it can pose a serious threat to the maintenance of peace.⁸⁸ Direct intervention such as subversion and all forms of indirect interventions are all contrary to the principles of international law and consequently constitute a violation of the UN Charter. Humanitarian intervention erodes the features of sovereignty including that of exclusive authority to exercise police and judicial powers within its recognized frontiers. Every state has an inalienable right to choose its political, economic and social and cultural systems without the interference by other states.⁸⁹ The use of force to deprive people of their national identity constitutes a violation of their inalienable rights and the principle of non intervention. The practice of any forms of intervention violates the spirit and the letter of the UN Charter and also leads to the crash of situation which threatens international peace and security. All states shall respect the rights of self-determination and independence of people and nationals to freely exercise without any foreign pressure and with absolute respect for human rights and the fundamental freedoms. Consequently, all state shall contribute to the elimination of all racial discrimination and colonialism in all its forms and manifestation.⁹⁰ No state should use force or coerce in order to obtain from it the subordination of the exercise of its sovereignty or to secure it from the advantages of any kind. No state should finance, incite, tolerate subversive, terrorist and armed activities directed towards the violent overthrow of the regime of another state or interfere in the civil strife in another state.

3.3 Sovereign equality

The doctrine of sovereign equality is premised on notion that all states are equal regardless of their economic, political rank. This doctrine is embodied in Article 2(1) of the UN Charter. This article⁹¹ states among other things that the organization is based on the principle of the sovereign equality of all its members. This article recognises equality among states, consequently, no

⁸⁸ Alexander Moseley and Richard Norman, 2002, *Human Rights and Military intervention*, Burlington: Ashgate publishing Limited.p.54.

⁸⁹ Antonio Tanca, 1993, *Foreign Armed Intervention in Internal Conflict*, Netherlands: Martinus Nijhoff Publishers

⁹⁰ Brien J. O., 2001, *International Law*, London, Cavendish Publishing Limited, p.230. See also Brownlie Ian, (2003), *Principles of Public International Law, 6th Ed*, Ney York, oxford University press, p. 416.

⁹¹ Article 2(1) of the United Nations (26 June 1945)

states have a right to intervene in the affairs of another state and all the states are entitled to absolute authority within their respective boundaries. It is true that although states are viewed as equal, in reality some states are more powerful than others and so the powerful states can easily take control of weaker states.⁹² So this principle protects weaker states in that it empowers weaker states and protects them from being oppressed by the powerful states of this world. Sovereign equality has created restraints on military intervention.

In the case of failing states⁹³, the protection of sovereignty diminishes. This is because a failing state has failed to live up to internationally recognised requirements of a state⁹⁴ and as such it no longer belongs to the same category as states and consequently loses its membership to the UN and the doctrine of sovereign equality will no longer apply to it. Humanitarian intervention in failing states has been internationally accepted time and again, yet interventions in functioning, repressive states have been met with much more dissent. Intervention in failing states does not represent the same potential threat to international peace and the principles of sovereignty as intervention in functioning states.

3.4 Responsibility to protect

The idea that the international community has moral obligations to individuals has recently been the subject of discussion in the debate over the emerging Responsibility to Protect (“R2P”) norm. R2P is an effort at providing new moral guidelines to humanitarian. The principle was endorsed by the United Nations General Assembly in 2005 and unanimously reaffirmed by the Security Council in 2006 (Resolution 1674).⁹⁵ It is intervention that recharacterizes sovereignty as

⁹² Materially sovereigns are not equal

⁹³ This is a state that has no legitimate government and thus ceases to be recognised as a state by the international community. Such a case exist where the government has collapsed due to for instance civil war within the country and resulted in the country having no ruling power.

⁹⁴ As stated in the Montevideo convention of 1933 one of which happens to be a recognised government.

⁹⁵ Alex J. Bellamy, 2008, The Responsibility to Protect and the problem of military intervention, *international affairs*, vol.84, issue 4. P. 615-639.

responsibility. States have an obligation to protect their citizens from humanitarian disaster, and when they fail, that obligation falls upon the international community.⁹⁶

A report by the International Commission on Intervention and State Sovereignty (ICISS) in 2001 proposes that the notion of sovereignty as control according to which a state has freedom to do what it wants to its own people should be replaced with the notion of sovereignty as responsibility according to which a state has the responsibility to uphold its citizens' basic human rights.⁹⁷ This responsibility primarily lies with the state, but if a state is unable or unwilling to uphold its citizens' basic human rights, such as in cases of genocide, war crimes, ethnic cleansing, and crimes against humanity, its sovereignty is temporarily suspended.⁹⁸ This may involve undertaking humanitarian intervention, providing that certain 'precautionary principles' have first been met.

Although far from being fully implemented, the language of a responsibility to protect has, to a certain extent, caught on. The emerging norm of humanitarian intervention, or the Responsibility to Protect, resembles a social insurance policy to protect ethnic groups against genocide and ethnic cleansing. Emerging international legal norm of the "responsibility to protect" suggests that the international community has an affirmative obligation to intervene in order to prevent atrocities in states that are themselves unwilling or unable to do so. The recent case was experience in Libya where the international community felt obliged to help the Libyan community from their own leader Muammar Gaddafi who was responsible for the killing of his nation. Heads of state around the world expressed their discomfort with the situation in Libya including president Obama of the United States of America and President Nicolas Sarkozy of France. Later America, France and the other states headed up NATO force in Libya for humanitarian assistance in order to fulfill the responsibility to protect

⁹⁶ Kathleen Renée Cronin-Furma, 2009, 60 Years Of The Universal Declaration Of Human Rights: Towards An Individual Responsibility To Protect, *American University International Law Review*, Vol25, Issue 1, P. 75-198.

⁹⁷ Hilaire McCoubrey, Nigel D. White, 1992, *International Law and Armed Conflict*, Hong Kong: Dartmouth, p.30.

⁹⁸ Antonio Tanca, 1993, *Foreign Armed Intervention in Internal Conflict*, Netherlands: Martinus Nijhoff Publishers, p.5.

From the above arguments we can see that there was initially sovereignty and its protection and now there is a new notion of the responsibility to protect. So does this mean that human rights override the right to sovereignty? Matters of human rights have over time led to the violation of the territorial integrity of some states by other states for the purpose of protecting human rights in those other states. Humanitarian objectives justify violence but what about respecting the sovereignty of the state? Do the rights of individuals take precedence over the rights of the state for instance to self determination? The problem is that territorial sovereignty and humanitarian intervention; both are principles of international law, yet the latter can hardly be executed without demeaning the former.⁹⁹ Historically, international law upheld a strict rule against intervention. However, there is increasing acceptance of the proposition that states that do not comply with their human rights obligations may not invoke the doctrine of nonintervention.¹⁰⁰ In conjunction with that proposition, it also appears that “the scope of morally permissible humanitarian intervention is growing “its soil.”¹⁰¹

Hugo Grotius, a seventeenth-century scholar and one of the earliest proponents of international law, was one of the first to comment on the legal aspects of interventions. It was his contention that a sovereign committing atrocity against his own subjects could provide justification for others taking up arms against that sovereign in defense of all humankind.¹⁰² Whenever this happen, questions on the legality of the intervention arose. During major crises, troubled states faced a choice: they could work with international organizations and other interested outsiders to realize their sovereign responsibilities; or they could obstruct those efforts, and thereby sacrifice their good standing and sovereign legitimacy.¹⁰³ Since human rights are now an integral component of international law, the failure of a sovereign to uphold its obligations to protect its

⁹⁹ Hans Blix, 1994, *International Dimensions of Human Rights*, Boston: Martinus Nijhoff publishers, p.273.

¹⁰⁰ Kathleen Renée Cronin-Furma, 2009, 60 Years Of The Universal Declaration Of Human Rights: Towards An Individual Responsibility To Protect, *American University International Law Review*, Vol25, Issue 1, P. 175-198.

¹⁰¹ *ibid*

¹⁰² Vessel David, 2003, The Lonely Pragmatist: Humanitarian Intervention In An imperfect World, *B.Y.U. Journal of Public Law Volume 18, Issue 1*, P. 1- 58.

¹⁰³ Alex J. Bellamy, 2008, The Responsibility to Protect and the problem of military intervention, *international affairs*, vol.84, issue 4. P. 615-639.

nationals adequately diminishes that sovereign's right to rely on the principle of non-intervention to protect it from other states.¹⁰⁴ Human rights are inherent values and they prevail where a choice has to be made over the merely international values of sovereignty.¹⁰⁵ Although the conflict may be internal, it does not necessarily entitle parties to disregard it and let human rights violation occur under their watch.

Actions by a state against its nationals are not considered solely a matter of domestic jurisdiction. State territory is not sufficient to warrant the taking of human life. "A nation forfeits its right to sovereignty if it unleashes or is unable to prevent massive human rights abuses."¹⁰⁶ But at what point could a state be judged to have forfeited its sovereignty, and what body has the right to make that decision? It follows that, when states are unwilling or unable to protect their citizens from grave harm, the principle of non-interference 'yields to the responsibility to protect'.¹⁰⁷ Consequently the question whether human rights override the right to sovereignty is answered. People who initiate massacre lose the right to participate in the normal process of domestic self-determination. Their military defeat is morally necessary. When of a state is unable or unwilling to protect human rights and regional stability and humanitarian crises ensues then intervention be sought under this.

3.5 Conclusion

All states have a right to sovereignty which entitles them to full control of their affairs and people within their jurisdictions. In terms of the doctrine of sovereign equality, all state are equal and no state shall be subject to interference from other states iregardles of its economic and political status. However this protection is not offered to failed states. However the doctrine of right to sovereignty is changing due to a new norm called responsibility to protect. This norm weakens the right to sovereignty and relaxes the doctrine of non intervention on the basis that the

¹⁰⁴ Sean D. Murphy, 2007, Criminalizing Humanitarian Intervention, *Western Reserve Journal of International Law*, Vol 23, issue 3, p. 341-377.

¹⁰⁵ Holzgrefe J.L. and Robert O. Keohane, 2003, *et al.* p. 11.

¹⁰⁶ Alex J. Bellamy, 2008, The Responsibility to Protect and the problem of military intervention, *international affairs*, vol.84, issue 4. P. 615-639.

¹⁰⁷ Holzgrefe J.L. and Robert O. Keohane, 2003, *et al.* p. 11.

international community has a responsibility to protect and intervene when a state is unable or unwilling to protect human rights in its jurisdiction. The principle of none intervention yields to responsibility to protect whenever there is human rights violation and the concerned state is unable or unwilling to protect human rights. This solves the dilemma of which to choose between human rights and the right to sovereignty. It then follows the right to sovereignty entails a state's responsibility to uphold its citizens' basic human rights and failure to do so result in other states intervening to protect or bring to an end human rights violations.

CHAPTER 4

The legality of French military intervention in Ivory Coast

4.1 Introduction

Earlier this year the world witnessed another military intervention by France in Ivory Coast. The chapter aims at assessing the circumstances under which this military intervention occurred. So the chapter will look at the state of affairs that provoked the intervention in Ivory Coast and the manner in which the intervention was carried out with regard to international law. A comparative study of Ivory Coast will also be carried out in this chapter in order to determine their effect if any on the recent case of military intervention in Ivory Coast.

4.1 Background of the crisis in Ivory Coast

A crisis set off in November 2010 after the presidential election, when the then incumbent president, Laurent Gbagbo, refused to accept his defeat in a presidential election he had postponed for years.¹⁰⁸ The international community recognized Mr. Ouattara as the winner of November's election. Despite this recognition and further declarations by the United Nations, that he had been decisively beaten by Alassane Ouattara, the opposition leader, Mr. Gbagbo clung to power. Violent attacks followed as a consequence. Mr. Gbagbo used security forces to terrorize citizens in the former capital of Abidjan. Consequently, Mr. Ouattara was forced to hole up in a hotel, protected by United Nations forces in Abidjan.¹⁰⁹

The United Nations and the European Union demanded Mr. Gbagbo's resignation, imposing severe economic sanctions that crippled the economy in the world's top cocoa exporter. Most banks in Ivory Coast closed as a result and the price of food went up. Water and electricity also became scarce as the two necessities were cut off in Ivory Coast north, which is controlled by Ouattara supporters. However all this efforts were futile in respect of pushing Gbagbo from power, it took devastating airstrikes by French and United Nations helicopters to help end Mr.

¹⁰⁸ Ann Talbot, 2011, *France intervenes in Ivory Coast's civil war*, available from:

<http://www.wsws.org/articles/2011/apr2011/ivor-a07.shtml>, accessed 15 September 2011

¹⁰⁹ Eve Zibel, 2011, *Critics Blast Obama for Neglecting Ivory Coast Civil War*, available at:

<http://www.foxnews.com/world/2011/04/04/critics-blast-obama-neglecting-ivory-coast-civil-war/#ixzz1Y2lxUlz1>, accessed on 14 September 2011.

Gbagbo's gamble to defy the international community, fight off Mr. Ouattara and extend his 10 year rule.

The U.N. reports that 200,000 people have fled fighting because of the violence in Abidjan's Abobo neighborhood. In more than three months since the disputed presidential vote, almost 400 people have been killed, mainly Ouattara supporters. Youssoufou Bamba, an Ouattara loyalist and the Ivory Coast's Ambassador to the UN had asked for more international intervention and a stronger mandate for the UN peacekeepers already stationed in the country.¹¹⁰

Within days of the Ivory Coast resolution being agreed, France and UNOCI¹¹¹ went into action in Abidjan. They bombarded the palace and presidential residence as well as Akueodo and Agban barracks in support of the United Nations request.¹¹² The UN had requested French to destroy heavy arms that were being used as weapons to harm civilians. The UN resolution did not authorize the French to attack, but UN Secretary General Ban Ki-moon wrote to Sarkozy to request French help. "It is urgent to launch necessary military operations to put out of action the heavy arms which have been used against the civilian population and the peacekeepers", Ban Ki-moon said in the resolution that requested for France help. They justified their action by claiming that pro-Gbagbo forces had used heavy artillery against civilians.¹¹³ Mr. Sarkozy and his government have emphasized that they were using military force in the name of the United Nations, not out of any colonial impulse, with the aim of saving lives.¹¹⁴ He claimed that the use of force was justified by recent United Nations Security Council resolutions demanding the protection of civilians so their actions were just a quick implementation of an idea, "the right to

¹¹⁰ Alex Lantier, 2011, *French, UN forces back military takeover of Ivory Coast, citing Libya war precedent*, available from: <http://www.wsws.org/articles/2011/apr2011/ivor-a02.shtml>, accessed 14 September 2011.

¹¹¹ United Nations Operation in Côte d'Ivoire

¹¹² Abayomi Azikiwe, 2011, *behind calls for intervention in Ivory Coast*, available from: http://www.workers.org/2011/world/ivory_coast_0113/, accessed on 14 September 2011.

¹¹³ Ann Talbot, 2011, *France intervenes in Ivory Coast's civil war*, available from: <http://www.wsws.org/articles/2011/apr2011/ivor-a07.shtml>, accessed 15 September 2011.

¹¹⁴ Bruce Crumley, 2011, *Anatomy of an Intervention: Why France Joined the U.N. Action in Abidjan*, available from: <http://www.time.com/time/world/article/0,8599,2063613,00.html>, accessed 15 September 2011.

protect," that has been floated for a decade.¹¹⁵ French claimed that they were protecting civilians in Ivory Coast not just the French citizens who were there.

4.3 Justification to the French involvement

While the world focused on Libya, dangerous developments in other parts of the world risked going unnoticed. The Security forces in Ivory Coast have shot dead seven women who were protesting against the president Laurent Gbagbo.¹¹⁶ Mr. Gbagbo's supporters were using military weapons against citizens including women and children. The number of casualties and deaths was increasing, water and electricity was also cut off. This situation is one that involved gross human rights violations and therefore justified immediate military action/humanitarian intervention to protect human rights of the civilians at the hands of Mr. Gbagbo and his supporters. Human rights violation justifies military intervention when they are so shocking on the human conscience. So since the events in Ivory Coast were shocking especially the killing of the women protestors and the way in which the killing happened where even a pregnant woman was shot in the stomach,¹¹⁷ the world could not just sit and watch. Such brutal killing cannot go on unopposed. Although the world seemed pretty occupied with the events of Libya at the time, French's involvement in Ivory Coast was necessary and thus justified in order to end gross human rights violations that were taking place in Ivory Coast and prevent ----- genocide.

4.3. Can a state use force against another state to install a democratic regime?

The crisis in Ivory Coast led to a question whether there is a justification under international law for a state to unilaterally use force to put a democratically elected government to power? Does such an intervention also fall into the umbrella word of humanitarian intervention? Whether the prohibition on the use of force extends to support given to a government come to power. French

¹¹⁵ Steven Erlanger, 2011, *New York Times*, France's Role in Three Conflicts Displays a More Muscular Policy, p4,

¹¹⁶ Rick Moran, 2011, UN, France intervene in Ivory Coast civil war, <http://www.time.com/time/world/article/0,8599,2063613,00.html#ixzz1Y2PiqJf>, accessed 15 September 2011.

¹¹⁷ Briansandberg, 2011, French Military Intervention in Libya and the Ivory Coast, available from: <http://briansandberg.wordpress.com/2011/04/06/french-military-intervention-in-libya-and-the-ivory-coast/>, accessed 15 September 2011.

authorities invoked the same “responsibility to protect” civilians that they have used to justify aggression against Libya, and their promotion of the right-wing National Council rebels there, to justify operations against Gbagbo. France said it had joined the operation there at the request of the United Nations, with the intent of “neutralizing heavy weapons that are used against the civilian population and United Nations personnel in Abidjan.”¹¹⁸

According to Dugard, a sovereign independent state is permitted to choose its own political system and government.¹¹⁹ States use different methods of choosing a government of their choice. Some do this through elections and others may use battles. These methods result in civil war at times. However in terms of the right to sovereignty and the doctrine of non-intervention, these civil wars are purely an internal matter and no state should interfere even if it generates into civil war.¹²⁰ The reason behind this is that any intervention would result in the violation of the right to self-determination of the people of that state. States are obliged not to interfere in the civil strife of other states.

A new government has a right to ask for assistance in order to ensure that the will of the people is respected.¹²¹ The use of force should be restricted to restoring a government chosen in democratic elections provided that such a government has consented to the intervention. The law prohibits intervention on the side of rebels and authorises collective self-defence to support a government with a specific invitation. It also follows that the support for an incumbent government is not allowed if the rebels form an organised movement with the political object of replacing the government. However the position is different where the rebels are receiving external help. Another state may intervene if the rebel supported by another state and such support is enough to amount into armed attack.

¹¹⁸ Ann Talbot, 2011, France intervenes in Ivory Coast’s civil war, available from:

<http://www.wsws.org/articles/2011/apr2011/ivor-a07.shtml>, accessed 15 September 2011.

¹¹⁹ John Dugard, 2005, *International Law: A South African Perspective*, Cape Town: Juta & CO Ltd, p520.

¹²⁰ John Dugard, 2005, *International Law: A South African Perspective*, Cape Town: Juta & CO Ltd, p520.

¹²¹ Susan Breau *The Situation in Ivory Coast: intervention to protect or regime change operation?*, available from: <http://internationallawnotepad.wordpress.com/2011/02/10/ivory-coast-political-situation-legality-anticipated-ecowas-military-intervention/>, accessed on 28 October 2011.

The International law not only requires respect for democracy but it condemns and rejects unconstitutional changes of government. In cases of serious violation of democracy the Security Council should intervene by passing a resolution after it has established that the situation constitute threat to international peace? With this in mind, what is the legal status of unilateral use of force for the same reason? What is the legality of France unilateral use of force in Ivory Coast? If the security council is inactive due to veto of one or more of its permanent members, other states may as a measure of last resort be tolerable in order to prevent genocide or other large scale violation of fundamental human rights or to ensure that the delivery of humanitarian assistance to population existentially threatened the state collapse and internal conflict e.g. Somalia in 1992 and also to effectuate popular participation and democratic consultation where the people's right to political self-determination is systematically suppressed. Although the above is supported by state practice, it is not yet a custom and thus unlawful. It is doubtful whether the proclaimed right to democratic governance has already gained the status of human rights so fundamental as to be capable of triggering a possibly lawful intervention. It is to be noted that current trends show that where democratically elected government has been dislodged against the will of the people then military intervention may be justified.

It should be shown that there was a massive human rights violation and crimes against humanity and that these could not be stopped by other ways than through use of force. In the case of Ivory Coast, there was economic sanction imposed in Ivory Coast and prior negotiations to try and make the old president to step down but all this was of no avail. So the use of force was the last resort in order to compel Mr. Gbagbo to step down.

4.4 Lawfulness or otherwise of the French activities in Ivory Coast

France, upon acting on the UN request to destroy the weapons that were being used on innocent civilians, also attacked the palace of former president Gbagbo. This means that they did more than what the resolution required of them. China and Russia, which like France are permanent members of the Security Council, have criticized the French interpretation of the resolutions and opposed its use of force against Ivory Coast. In order to determine the legality of France military intervention in Ivory Coast, it is therefore necessary to classify the political crisis to see if France has legal grounds for intervention. (a) It is very obvious that it was an internal crisis. (b) It is an

internal conflict that threatened to trigger humanitarian disaster. This crisis, indeed, placed a heavy refugee burden on neighboring states. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), over 14,000 people have fled the political turmoil and have crossed over to Liberia, following the disputed presidential elections.¹²² (c) An incumbent government has refused to relinquish power to the democratically elected party. (d) It is posing a threat to peace and security in the Sub region. The new democratic government of Ivory Coast was removed unconstitutionally. The situation was a threat to international peace and security and was violation of fundamental human rights. France intervention was unlawful because the crisis in Ivory Coast met the above requirements.

France attacked the palace of former president Gbagbo. They wanted to force him to step down and accept his defeat so that the newly elected president Mr. Alassane Ouattara can come to power. The use of force in support of democratic regimes is an area of controversy under international law. Pro-democratic intervention (PDI) has been defined as the use of force to restore a democratically elected government which has been removed from power by unconstitutional means.¹²³ The definition shall be extended to include the use of force to install a democratically elected government into power after the refusal by an incumbent government to relinquish power to the democratically elected party.

The international military involvement risked strengthening one of Mr. Gbagbo's most potent propaganda weapons: that he was being singled out by foreign forces, notably the French and the United Nations, in an attack on Ivorian sovereignty. While it is a generally accepted views that the UN Charter's prohibition on the use of force,¹²⁴ in terms of the PDI norm as part of customary international law France in trying to reinforce the democratically elected government

¹²² Bruce Crumley, 2011, *Anatomy of an Intervention: Why France Joined the U.N. Action in Abidjan*, available from: <http://www.time.com/time/world/article/0,8599,2063613,00.html>, accessed 15 September 2011

¹²³ Susan Breau, 2011, *Ivory Coast's Political Stalemate: The Legality of the anticipated ECOWAS Military Intervention*, available from: <http://internationalawnotepad.wordpress.com/2011/02/10/ivory-coast-political-situation-legality-anticipated-ecowas-military-intervention/>, accessed on 15 September 2011

¹²⁴ Article 2(4) of the UN charter

of Mr. Alassane Ouattara which was unlawfully removed from power is acting in compliance with customary international law.

Therefore, in view of these crises in Ivory Coast, France is not an international or regional organisation like UN or ECOWAS for it to take it upon itself to intervene in the affairs of Ivory Coast. Although France has tried all non military methods to try and end the crises in Ivory Coast, France was not invited by Ivory Coast to intervene; there was no consent on the side of Ivory Coast for France to intervene.¹²⁵ This is an indication that the intervention was unlawful.

Within the UN system, France's intervention had to be sanctioned by the United Nations. As stated in Chapter VIII, Article 53 of the UN, no enforcement action shall be taken under regional arrangements or by regional agencies without prior authorization from the Security Council. The Security Council had to determine that the situation in Ivory Coast has constituted a threat to international peace and security in the region. It had to determine and pass a resolution authorizing France to carry out their mandate in order for France to have its legal basis for military intervention in Ivory Coast more solidified. However, the UN Security council did not authorise such intervention, so such intervention is illegal under international law. From past experience for instance Kosovo, it has become state practice that where there is gross human rights violation and the UN failed to intervene, humanitarian intervention is justified. In light of the foregoing background, France's military intervention can be condoned because it was justified in that it aimed at preventing genocide and massive human rights violations. In conclusion, it seems that the UN Security Council in recent times has demonstrated lackadaisical attitude and lack of genuine interest concerning intervention in most crises. However, the willingness of some regional organisation and some states to intervene militarily in the region has contributed to the emerging PDI norm¹²⁶ under customary international law thus evidencing

¹²⁵ Susan Breau, 2011, Ivory Coast's Political Stalemate: The Legality of the anticipated ECOWAS Military Intervention, available from: <http://internationalawnotepad.wordpress.com/2011/02/10/ivory-coast-political-situation-legality-anticipated-ecowas-military-intervention/>, accessed on 15 September 2011

¹²⁶ Pro-democratic intervention (PDI) which entails the use of force to restore a democratically elected government which has been removed from power by unconstitutional means

a gradual shift in international law allowing states or organisations to intervene in internal conflicts.

4.5 A comparative study of military intervention in Ivory Coast and past cases of military intervention:

Before France intervened militarily in Ivory Coast, there were numerous military interventions in the past. These interventions were also unilateral but somehow as it is a golden rule under the law, every case is considered according to its merits. This part was incorporated in this paper to allow the author to do a comparative study on the case of Ivory Coast and other past humanitarian intervention cases in order to determine what impact if any these past intervention practice had on the case of Ivory Coast. First an analysis of every intervention case will be made, considering the background of the crises in each state and the reasons furnished for each intervention. Finally a comparison will be made between Ivory Coast and these past intervention cases

Kosovo

The NATO's intervention in Kosovo created much controversy about its legality in terms of article 2(4) of the UN charter states and commentators expressed their opinions on the matter with disagreements. While some claimed that a new right to humanitarian intervention was emerging, others contended that the NATO action was an absolute breach of the UN Charter. This chapter will focus on the arguments brought forward by the states and writers with regard to the legality of this intervention. First it will outline the events that led to the intervention and then it will analyse the position of this intervention within the international law.

The 11 weeks long shelling¹ by NATO forces of military and civilian targets in The Federal Republic of Yugoslavia (the FRY) in 1999 sparked a vigorous debate about the use and lawfulness of such operations. The intervention, known as "Operation Allied Force", was launched after several warnings had been relayed by NATO to the Government of the FRY that an armed operation would follow even without authorisation from the Security Council in case President Slobodan Milosević and his Government proved unwilling or unable to comply with

UN Security Council Resolution 1199 of 23 September 1998.¹²⁷ This resolution called for an immediate cessation of the massive atrocities being committed by Serbian troops, authorities and paramilitary forces against the Albanian population in Kosovo in their attempt to suppress and discourage further exertions for an independent Kosovo. Estimates were that at least 10,000 Kosovar Albanians had been killed by FRY forces and Serbian militias in the months leading up to and during the operation, while approximately 863,000 civilians were forced into refuge outside Kosovo and an additional 590,000 persons internally displaced.¹²⁸ Evidence was also found of widespread rape and torture committed against Kosovar Albanians, as well as looting, pillaging and extortion.

This dispute was merely a reflection of the underlying political conflict between respect for the sovereignty and territorial integrity of States on the one hand, and respect for human rights on one hand humanitarian law on the other. In legal terms, notably, this controversy transpired as the conflict between the ban on the use or threat of force on the one hand, and the assumed duty to prevent violations of human rights and humanitarian law by all means even by armed force if necessary on the other.¹²⁹ Was the NATO action unlawful? Yes and no. Yes, in the sense that the prohibition in Article 2(4) cannot be said to have been repealed in practice. No, in the sense that no undesirable consequences followed on NATO's technically illegal initiative because, in the circumstances as they were understood by the large majority of UN members, the illegal act produced a result more in line with the purpose and spirit of the UN Charter. Invasion in Kosovo violates article 2(4) of the UN Charter but it led to the result that is lawful. The intervention produced a result more in line with the intent of the law (i.e. "more legitimate") and more moral than would have ensued had no action been taken to prevent genocide. In other words, the unlawfulness of the act was mitigated, to the point of exoneration, in the circumstances in which

¹²⁷ Frederik Harhoff, 2001, unauthorised Humanitarian Interventions – Armed Violence In The name Of Humanity? *Nordic Journal Of International Law* Vol. 70, Issue ½, P. 65–119.

¹²⁸ Christine Gray, 2003, The Use and Abuse of the International Court of Justice: Cases concerning the Use of Force after Nicaragua, *European Journal of International Law* vol.14.no.5, p867-905.

¹²⁹ Frederik Harhoff, 2001, unauthorised Humanitarian Interventions – Armed Violence In The name Of Humanity? *Nordic Journal Of International Law* Vol. 70, Issue ½, P. 65–119.

it occurred. The 1999 NATO bombing campaign in the former Yugoslavia is a prime example of how illegal state actions are sometimes excused or mitigated by the response of other states.

Kosovo case led to the question as to whether unilateral Humanitarian intervention is allowed under article 2(4). Kosovo case UK argued that the interpretation of article 2(4) has changed to meet new situations.¹³⁰ It was stated that there is an obligation to intervene to prevent humanitarian catastrophe which was occurring and which had been established by Security Council in its resolution in order to protect those essential human rights which had achieved status of *ius cogens*.¹³¹ On June 2, 1999, the International Court of Justice (ICJ) rejected, by clear majorities, a requests filed by Yugoslavia against ten NATO member states on April 29, 1999, asking the ICJ to order the NATO members to "cease immediately [their] acts of use of force" and to "refrain from any act of threat or use of force" against Yugoslavia.¹³²

Rwanda

On April 6, 1994, Rwanda's moderate Hutu President Juvenal Habyarimana was killed in a plane crash outside the Rwandan capital Kigali.¹³³ This incident also killed the Burundi president Cyprien Ntaryamira. The circumstances of the crash were unclear, some accused the Tutsi rebels for having shot down the plane, while other suspected the Hutu government military force themselves due to their disagreements for the moderate Habyarimana's effort to reconcile with the Tutsi. The Hutus then seized control of the government killing the Habyarimana prime minister and claimed that he was killed by the Tutsi and this provoked the tension between the Tutsi and the Hutus. The Hutus attacked the Tutsi and the Tutsi retaliated. The civil war broke out killing an estimated eight hundred thousand people mainly the Tutsi.¹³⁴

¹³⁰ Sean D. Murphy, 1996, *Humanitarian Intervention, the United Nations in an evolving world order, volume 21, procedural aspects and international law series*, Philadelphia: University of Pennsylvania Press, p.245.

¹³¹ Malcolm D Evans, 2003, *International Law*, New York: Oxford University Press, p.595.

¹³² Dr. Peter H.F. Bekker and Christopher J. Borgen, 1999, *World Court Rejects Yugoslav Requests to Enjoin Ten NATO Members from Bombing Yugoslavia*, available from: <http://www.asil.org/insigh36.cfm>, accessed: 15 September 2011.

¹³³ Sean D. Murphy, 1996, *Humanitarian Intervention, the United Nations in an evolving world order, volume 21, procedural aspects and international law series*, Philadelphia: University of Pennsylvania Press, p.245.

¹³⁴ Malcolm D Evans, 2003, *International Law*, New York: Oxford University Press, p.595.

States were hesitant on helping Rwanda. France offered in order to protect the groups threatened with extinction. France was of the opinion that European and African partners would help with the intervention but to all the other states were not forthcoming and those that offered to help gave equipments and not troops. USA declined to give troops, Burundi, Tanzania and Uganda refused to let France stage an operation from their territories. Furthermore, the intervention was opposed by the leaders of the Tutsi and their military chief stated stating that they consider France forces as an enemy and they will combat by all means. France needed a Security Council authorization in order to intervene as they could not proceed with the intervention without it. Although the Tutsi vowed the Security Council not to authorize the resolution permitting France to intervene in Rwanda, the Security Council passed resolution 929 authorizing the use of all necessary means to achieve humanitarian objectives. French set up in Zaire. No intervention came through during the time of conflict. This event claimed the lives of an estimated eight hundred people. The Rwandan people were abandoned when they needed help the most. Genocide is an international law crime, surely it justifies intervention. Rwanda social security determined that the massacre of up to a million Tutsi constituted a threat to peace although the refugees to neighboring countries was visible, they did not do anything. The UN tried to help but its efforts were not aggressive. It did not try herder so somehow their efforts were confusing. It is only France who came to help end the crisis although their efforts came at a later stage when damage has been done, it helped end the civil war.

Somalia

Civil war broke out in Somalia in the year 1988 with various clans wanting president Mohamed Said Barreto steps down and this wish was eventually realised. In 1991 these clans turned on each other, killing thousands of people, driving thousands of people from their homes, and destroying the country's infrastructure and consequently crippling the economy. Central state collapsed altogether, and Somalia became a country without a government or other political authority with whom the basis for humanitarian intervention can be negotiated. Security Council determined that the civil war was a threat to international peace and security to be sure the

collapse of the Somali state produced refugee flow that affected neighboring countries. US intervened in Somalia under Unified Task Force (UNITAF) to halt a humanitarian crisis in the region that was largely a result of anarchy.¹³⁵ After that the secretary general proposed that UNITAF transfer command to UN force to consist of up to 28 000 troops under a UN command. Whereas INITAF operated at 40% of Somalia, UNISOM II was to operate throughout the country. UNISOM failed to maintain the peace and order that had been established by UNITAF and violence broke down in Mogadishu killing UN forces and wounding many of them. The Security Council condemned the attacks. The purpose of the UN forces in Mogadishu was to disarm by compulsion and to help in the orderly distribution of food and other aid to the needy. Due to the attacks, the UN staff left Somalia disturbing the distribution of food and medical supplies. This violence attacks on the UN official discouraged states from helping the Somalian people. Intervention in Somalia was unsuccessful and it contributed to the unwillingness to intervene in Rwanda. The lack of government from which approval for humanitarian intervention could be gained was instrumental in the precedence over other countries in need of urgent humanitarian aid. The ban on use of force has proven to be inadequate in this case because there was no risk of infringing upon the right of sovereignty because Somalia was a failed state.

Comparative analysis of the above cases to Ivory Coast

When comparing the case of Ivory Coast to Kosovo, It is imperative to start with the authorization of intervention as a requirement under article 53 of the UN charter. In the case of Kosovo there can be little doubt that prescribed procedures of decision-making were not followed. The U.N. resolutions clearly state that nations are prohibited from engaging in offensive military action against sovereign members without sanction from the Security Council. The US in leading the NATO alliance into offensive battle, disregarded this exclusive authority and responsibility of the Security Council and took it upon itself to intervene in the Kosovo conflict. The Serbs were legally correct to assert that United States and NATO were engaged in

¹³⁵ Sean D. Murphy, 1996, *Humanitarian Intervention, the United Nations in an evolving world order, volume 21, procedural aspects and international law series*, Philadelphia: University of Pennsylvania Press, p.226.

aggression. Similarly in Ivory Coast, France also did not have authorisation. Kosovo was intervened by NATO, an organization and in Ivory Coast intervention was by France, an individual state but both needed prior UN authorization for the intervention to be lawful.

Although France intervened in both Ivory Coast and Rwanda, in the latter country, France was impartial and could not take part in the fight between the two tribes. In Ivory Coast France was not impartial as it was attacking the opposition leader in an attempt to force him to step down. The French efforts in Ivory Coast were early in order to prevent a massacre but in Rwanda it was taken at a later stage and could not really prevent the massacre. In Rwanda, France could not do anything without a UN resolution allowing them to intervene, while in Ivory Coast; France did not wait for a resolution that allowed them to intervene. They acted without the necessary authorisation and outside the resolution that allowed them to go to Ivory Coast.

In Somalia the facts are different. Unlike in Ivory Coast, there was no stable government in Somalia capable of making decisions. The intervention was not met with so much controversy because it did not infringe upon the right to sovereignty. The intervention in Somalia was undertaken by UN and in Ivory Coast it was undertaken by France. The purposes of the intervention differed in that, in Ivory Coast, the intervention aimed at helping a democratically elected government come to power and in Somalia, the intervention was a humanitarian one that aimed at maintaining an orderly distribution of humanitarian aid but not necessarily military one. However it became violent when series of violent attack occurred against UN official in Mogadishu.

4.6 Conclusion

War broke out in Ivory Coast as a result of the refusal to step down by Mr. Gbagbo after his defeat in the presidential elections. The UN asked France to step in and destroy the weapons that Gbagbo and his supporters were using on innocent civilians. France in carrying out this mandate overstepped its authority as per resolution and attacked the palace of Mr. Gbagbo. This action was neither authorised by UN nor was France invited by the new government being the one with authority. France reasoned that they were acting in compliance with the UN request. This military intervention is unlawful under international law because it does not comply with the

requirements of lawful intervention under international law. France did not have the necessary authority to intervene in Ivory Coast. The author of this paper contends that the intervention should be condoned because it aimed at bringing a democratically elected government to power which was unconstitutionally removed from power. The intervention also prevented genocide

The a comparison of the military intervention in Ivory coast to that of Kosovo reveals that both interventions were unauthorised because there was no express authority from the UN. When it comes to Rwanda the difference is that when France intervened in Rwanda it obtained a UN resolution that allowed it to do so. They did not interpret any resolution in their favour as they did in Ivory Coast with the resolution that requested them to destroy the weapons. The difference between the intervention in Ivory Coast and the one that occurred in Somalia is that Somalia was a failed state. There was no authority to consent to the intervention unlike in Ivory Coast. The other significant difference is that the military intervention in Somalia was not a success, because of a series of violent attacks on the UN officials who were carrying out the intervention. But the major difference between Ivory Coast and the past intervention cases is that in Ivory Coast, the intervention was not aimed at protecting the national of another state. This means that it was not a clear cut humanitarian intervention case. The intervention in Ivory Coast aimed at bringing a democratically elected government to power. This intervention aimed at protecting human rights because the right to self-determination is also part of the human rights. The people should be offered a right to choose the government of their choice and their choice should be respected. Against this background, it is therefore arguable that France military intervention in Ivory Coast was justified and thus tolerable.

Recommendations

Since military intervention is justified under certain circumstances, the international law ought to be reformed to allow for it and to create more clarity and prevent it from being misused. This is because intervention although not allowed by international law it is still happening sometimes even without the necessary authorization. As such, it leads to the misuse of the umbrella word “humanitarian aim”. The law should thus clearly set out what constitute human rights worth intervention and humanitarian objectives that are legitimate. International community should make effort to redefine the principle of humanitarian intervention in a way that minimizes the

motive intervening powers. Moreover, international law should put a limit on what means of intervention are justified under given circumstances. First try to settle, negotiate and avoid bloodshed. States and international organizations should always make it a point to exhaust all non military ways of resolving disputes and military intervention should be the last resort when all has failed.

The law should also put measures in place to punish those that breach this norm. With all the unilateral military intervention happening, it's not clear what the consequences of unlawful intervention are under international law. The law should thus set out what the consequences of breach of the doctrine of non intervention are. States which intervene in other states internal affairs misusing the concept of military intervention should be severely punished to deter other states from same practice, because states need to uphold and respect international law. Such punishment can be in the form of Economic or military against the intervening states. It will also be convenient if international law made a provision for states to pursue ad hoc but principled action. This will allow states to intervene militarily in exceptional case in order to protect human rights while the UN Security Council tries to overcome their impasse.

Conclusion

The United Nations Charter rendered war i.e., the use of force by states across borders illegal except in two instances, these being self-defense and collective action authorized by the Security Council. However, some have long argued for a third exception to the above rule. The Argument that human right also constitutes an important element of international law, and thus, forms an exception to the use of force. The argument is that humanitarian intervention should form an additional exception to the use of force. Unilateral Military intervention is always met with controversy due to the fact that it does not qualify as *jus cogen* yet. This means that under customary international law, unilateral humanitarian intervention is still unlawful. There is no right for intervention on any state and no state has a duty to intervene. It is absolutely voluntary.

Humanitarian intervention should comply with certain criteria for it to be lawful. It should, when undertaken on a UN mandate under UN authorization and coordination or an organization to which states belong; so as to secure international control and legitimacy. It should be carried out by a regional organization concerned, with authorization of Security Council. For instance

NATO should have consulted with the Security Council when it intervened in Kosovo. Where there is total lack of government and seriousness and there is a gravity of the human rights violation, there is no violation of sovereignty. Intervention should not interfere, influence act against or put into question the political independence and territorial sovereignty of states concerned. It should follow a neutral approach in the sense that it should not attempt to take sides in the internal political conflicts.

However the veil on sovereignty can be pierced. This means that the right of sovereignty can be disregarded in some situation. It has been stated that violation of human rights is no longer regarded as pure internal matter. The right to sovereignty has been reformed by the responsibility to protect norm. In terms of this norm, a state has an obligation to protect human rights within its jurisdiction. Failure or unwillingness to do so justifies for an intervention. Thus, an intervention will follow in order to protect human rights and to prevent genocide. The right to sovereignty and the doctrine of non-intervention yields to the responsibility to protect in order to prevent human rights violation.

Since human rights justify intervention it needs to be determined whether the right to self-determination also falls within the ambit of human rights. Is the right to self-determination part of the human rights and if so, is worth use of force. According to Dugard, an intervention on the basis of installing a democratic regime is unlawful because it violates the right to self-determination. The author of this paper chooses to differ. The right to self-determination entails the right of the people to freely choose the government of their choice and for their choice to be respected. How then is this right upholding, when the government they have chosen is unconstitutionally overthrown from power? The newly elected government represents the people's voice and right to self-determination. This is part of their human rights. An unconstitutional removal of a democratic regime also constitutes an internal violation of the right to self-determination. And an intervention which aims at installing democratic regime is also aimed at protecting human rights and thus justified. International law requires respect for democracy and prohibits unconstitutional changes to government. Thus intervention for purposes installing a democratically elected government should be allowed to protect the right to self-determination of the people as part of their human rights.

Reference list

Books

1. Alexander Moseley and Richard Norman, 2002, *Human Rights and Military intervention*, Burlington: Ashgate publishing Limited.
2. Antonio Tanca, 1993, *Foreign Armed Intervention in Internal Conflict*, Netherlands: Martinus Nijhoff Publishers.
3. Brien J. O., 2001, *International Law*, London, Cavendish Publishing Limited.
4. Brownlie Ian, (2003), *Principles of Public International Law*, 6th Ed, Ney York, oxford University press.
5. Christine Gray, 2000, *International Law and the use of Force*, New York: Oxford University Press.
6. Judith Gardidam, 2004, *Necessity, Proportionality and use of force by states*, Madrid, Cambridge University press.
7. John Dugard, 2005, *International Law: A South African Perspective*, Cape Town: Juta & CO Ltd.
8. Hans Blix, 1994, *International Dimensions of Human Rights*, Boston: Martinus Nijhoff publishers.
9. Hilaire McCoubrey, Nigel D. White, 1992, *International Law and Armed Conflict*, Hong Kong: Dartmouth.
10. Holzgreffe J.L. and Robert O. Keohane, 2003, *Humanitarian Intervention: Ethical, Legal and political Dilemmas*, New York: Cambridge University Press.
11. Luis B. Sohn and Thomas Buuergenthal, 1973, *International Law and the Protection of Human Rights*, New York: The Bobbs – Merrill Company INC.
12. Malcom D Evans, 2003, *International Law*, New York: Oxford University Press.
13. Malcolm N. Shaw, 2008, *International Law*, New York: Cambridge University Press.
14. Martha Finnermore, 2004, *The Purpose Of Intervention In Changing Believes About The Use Of Force*, New York: Cornell University Press.
15. Michael Welzer, 1977, *Just and Unjust Wars*, New York: Basic Books.
16. Nicholas j. Wheeler, 2000, *Saving Strangers: Humanitarian Intervention in the International Society*, New York: Oxford University Press.

17. Phillip L. Robert, 1996, *Humanitarian Intervention Just Wars Vs Pacifism*, Maryland: Rowman & Littlefield Publishers Inc.
18. Sean D. Murphy, 1996, *Humanitarian Intervention, the United Nations in an evolving world order, volume 21, procedural aspects and international law series*, Philadelphia: University of Pennsylvania Press
19. Simon Chesterman, 2003, just War or Just Peace, *Humanitarian intervention and international law*, New York: Oxford University Press.
20. Tom J. Farer, 2003, Humanitarian Intervention before and after 9/11: Legality and Legitimacy, in Holzgrefe J.L. and Keohane O., 2003, *Humanitarian Intervention Ethical, Legal, and political dilemma*, New York: Cambridge University Press.

Journals

1. Alex J. Bellamy, 2008, The Responsibility to Protect and the problem of military intervention, *international affairs*, vol.84, issue 4. P. 615-639,
2. Christine Gray, 2003, The Use and Abuse of the International Court of Justice: Cases concerning the Use of Force after Nicaragua, *European Journal of International Law* vol.14.no.5, p867-905.
3. Enabulele A.O, 2010, Humanitarian intervention and territorial sovereignty: the dilemma of two strange bedfellows, *The International Journal of Human Rights*, Vol. 14, No. 3, p. 407–424.
4. Frederik Harhoff, 2001, unauthorised Humanitarian Interventions – Armed Violence In The name Of Humanity? *Nordic Journal Of International Law* Vol. 70, Issue ½, P. 65–119.
5. James Pattison, 2008, who's Responsibility to Protect? The Duties of Humanitarian Intervention, *Journal of Military Ethics*, Vol. 7, No. 4, p. 262-283.
6. Jens Elo Rytter, 2001, Humanitarian Intervention without the Security Council: From San Francisco to Kosovo – and Beyond, *Nordic Journal of International Law*, vol 70, issue1/2, p. 121-16.

7. Kathleen Renée Cronin-Furma, 2009, 60 Years Of The Universal Declaration Of Human Rights: Towards An Individual Responsibility To Protect, *American University International Law Review*, Vol25, Issue 1, P. 75-198,
8. Sean D. Murphy, 2007, Criminalizing Humanitarian Intervention, *Western Reserve Journal of International Law*, Vol 23, issue 3, p. 341-377.
9. Shaun Narine, 2005, Humanitarian Intervention and the Question of Sovereignty: The Case of ASEAN, *Perspectives on Global Development and Technology*, Volume 4, issue 3-4, p. 465-485.
10. Steven Erlanger, 2011, *New York Times*, France's Role in Three Conflicts Displays a More Muscular Policy, p4,
11. Vessel David, 2003, The Lonely Pragmatist: Humanitarian Intervention In An imperfect World, *B.Y.U. Journal of Public Law* Volume 18, Issue 1, p. 1- 58.

Websites

1. Ann Talbot, 2011, *France intervenes in Ivory Coast's civil war*, available from: <http://www.wsws.org/articles/2011/apr2011/ivor-a07.shtml>, accessed 15 September 2011
2. Alex Lantier, 2011, *French, UN forces back military takeover of Ivory Coast, citing Libya war precedent*, available from: <http://www.wsws.org/articles/2011/apr2011/ivor-a02.shtml>, accessed 14 September 2011.
3. Abayomi Azikiwe, 2011, *behind calls for intervention in Ivory Coast*, available from: http://www.workers.org/2011/world/ivory_coast_0113/, accessed on 14 September 2011.
4. Bruce Crumley, 2011, *Anatomy of an Intervention: Why France Joined the U.N. Action in Abidjan*, available from: <http://www.time.com/time/world/article/0,8599,2063613,00.html>, accessed 15 September 2011.

5. Briansandberg, 2011, *French Military Intervention in Libya and the Ivory Coast*, available from:
<http://briansandberg.wordpress.com/2011/04/06/french-military-intervention-in-libya-and-the-ivory-coast/>, accessed 15 September 2011.
6. Bruce Crumley, 2011, *Anatomy of an Intervention: Why France Joined the U.N. Action in Abidjan*, available from:
<http://www.time.com/time/world/article/0,8599,2063613,00.html>, accessed 15 September 2011
7. Charles (Chip) Hauss, 2003, *not titled*, available from:
www.beyondinteractibility.org/essay/. (accessed on 05 July 2011)
8. Charles Knight, 2001, *what justifies military intervention*, available from
www.beyondinteractibility.org/essay/. (accessed on 05 July 2011)
9. Eve Zibel, 2011, *Critics Blast Obama for Neglecting Ivory Coast Civil War*, available at:
<http://www.foxnews.com/world/2011/04/04/critics-blast-obama-neglecting-ivory-coast-civil-war/#ixzz1Y2IxUIz1>, accessed on 14 September 2011
10. Hugo slim, not dated, *military intervention to protect human right: the humanitarian agency perspective, oxford university, UK*, available from;
<http://www.jharac/articles/a084.htm>, accessed on 9 July 2011.
11. Dr. Peter H.F. Bekker and Christopher J. Borgen, 1999, *World Court Rejects Yugoslav Requests to Enjoin Ten NATO Members from Bombing Yugoslavia*, available from: <http://www.asil.org/insigh36.cfm>, accessed: 15 September 2011.
12. Rick Moran, 2011, UN, *France intervene in Ivory Coast civil war*,
<http://www.time.com/time/world/article/0,8599,2063613,00.html#ixzz1Y2PiqaJf>,
 accessed 15 September 2011.
13. Susan Breau, 2011, *Ivory Coast's Political Stalemate: The Legality of the anticipated ECOWAS Military Intervention Ivory Coast's Political Stalemate*, available from: <http://internationalawnotepad.wordpress.com/2011/02/10/ivory-coast-politicalsituation-legality-anticipated-ecowas-military-intervention/>,
 accessed on 15 September 20

Statutory law

1. The Geneva Convention for the Protection of Civilians persons in times of War of August 12 1949
2. protocol 1 of the Geneva convention
3. Namibian constitution
4. Resolution 1514 *4 14 December 1960
5. Montevideo convention of 1993
6. United Nations charter (26 June 1945)
7. International Covenant on Civil and Political Rights (“ICCPR”)
8. International Covenant on Economic, Social, and Cultural Rights (“ICESCR”),