

STATE SOVEREIGNTY AND HUMANITARIAN INTERVENTION

A REFLECTION ON THE NATO INTERVENTION IN LIBYA 2011

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DEDICATION

I dedicate this work to my beloved Mother Ms. Jane Rose Nyangwen for her unmeasured support during the period of my study. I thank her and my entire family for the prayers and words of encouragement.

In the same faith I immaculately want to dedicate this work to my Son. Kymani Osinde and daughter Etana Osinde .

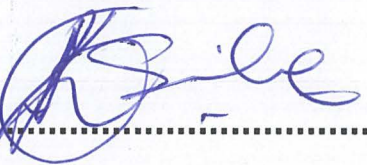
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CHAPTER ONE

1.0 INTRODUCTION

On 19 March 2011, a multi-state coalition began a **Military Intervention in Libya** to implement United Nations Security Council Resolution 1973. The United Nations Intent and Voting was to have "an immediate ceasefire in Libya, including an end to the current attacks against civilians, which it said might constitute crimes against humanity" ... "imposing a ban on all flights in the country's airspace – a no-fly zone – and tightened sanctions on the Gaddafi regime and its supporters." The resolution was taken in response to events during the Libyan Civil War, ("Security Council Approves 'No-Fly Zone' over Libya, Authorizing 'All Necessary Measures' To Protect Civilians in Libya, by a Vote of Ten For, None Against, with Five Abstentions".)¹ and military operations began, with American and British naval forces firing over 110 Tomahawk cruise missiles, the French Air Force, British Royal Air Force, and Royal Canadian Air Force undertaking sorties across Libya and a naval blockade by Coalition forces. Air strikes against Libyan Army tanks and vehicles by French jets were since confirmed. The official names for the interventions by the coalition members are Opération Harmattan by France; Operation Ellamy by the United Kingdom; Operation Mobile for the Canadian participation and Operation Odyssey Dawn for the United States.

From the beginning of the intervention, the initial coalition of Belgium, Canada, Denmark, France, Italy, Norway, Qatar, Spain, UK and US expanded to nineteen states, with newer states mostly enforcing the no-fly zone and naval blockade or providing military logistical assistance. The effort was initially largely led by France and the United Kingdom, with command shared with the United States. NATO took control of the arms embargo on 23 March, named Operation Unified Protector. An attempt to unify the military command of the air campaign (whilst keeping political and strategic control with

¹United Nations. 17 March 2011. Archived from the original on 19 March 2011.

a small group), first failed over objections by the French, German, and Turkish governments. On 24 March, NATO agreed to take control of the no-fly zone, while command of targeting ground units remains with coalition forces. The handover occurred on 31 March 2011 at 06:00 UTC (08:00 local time). NATO flew 26,500 sorties since it took charge of the Libya mission on 31 March 2011.

Fighting in Libya ended in late October following the death of Muammar Gaddafi, and NATO stated it would end operations over Libya on 31 October 2011. Libya's new government requested that its mission be extended to the end of the year, but on 27 October, the Security Council voted to end NATO's mandate for military action on 31 October.

There is debate about whether other recent infringements of state sovereignty in Libya by NATO (the 2011 Libyan civil war), also reflected these higher principles or whether the real justification was simply the promotion of political and economic interests.

1.2 BACKGROUND OF THE STUDY

The uprising for political reforms in Libya against the Muammar el-Gaddafi regime occurred in the context of the so-called "Arab Spring," in which states in North Africa and the Middle East claimed democratization of their states. In mid-February 2011, several protesters were killed by Gaddafi's forces in Benghazi and other eastern cities². During the clashes between the Libyan authority and the opposition group, Gaddafi's forces used armed force to contain those protesters. While the Gaddafi regime still maintained its authority in Tripoli, the capital of Libya, the opposition headquartered in Benghazi occupied eastern Libya. Gaddafi denounced protesters as "cockroaches" and stated that he would "cleanse Libya house by house." On February 26, the Security Council adopted Resolution 1970, establishing an arms embargo and imposed sanctions on Gaddafi and his family. In March, the UN also dispatched some officials to Libya to persuade Libyan government officials to end the violence. Moreover, UN Secretary-

² Christopher M. Blanchard, "Libya: Unrest and U.S. Policy." *Congressional Research Service* (2011), p.1.

General Ban Ki-moon personally spoke with Gaddafi on the phone to persuade his compliance with the resolution. However, those diplomatic efforts turned out to be failures. Consequently, on March 17, the Security Council adopted Resolution 1973, authorizing "all necessary measures...to protect civilians..." On the next day, NATO air forces initiated bombing on Libya.³

During the Libyan Civil War, violence between protestors and the Libyan government under Colonel Muammar Gaddafi escalated, and on 17 March 2011 led to the passage of United Nations Security Council Resolution 1973, which called for a ceasefire, and authorized military action to protect civilians. A coalition that included several NATO members began enforcing a no-fly zone over Libya shortly afterwards. On 20 March 2011, NATO states agreed on enforcing an arms embargo against Libya with Operation *Unified Protector* using ships from NATO Standing Maritime Group 1 and Standing Mine Countermeasures Group 1 and additional ships and submarines from NATO members..

The US had the air assets necessary to enforce a no-fly zone, but was cautious to support such an action prior to obtaining a legal basis for violating Libya's sovereignty. However, due to the sensitive nature of military action by the US against an Arab nation, the US sought Arab participation in the enforcement of a no-fly zone.

At a congressional hearing, United States Secretary of Defence Robert Gates explained that "a no-fly zone begins with an attack on Libya to destroy the air defences ... and then you can fly planes around the country and not worry about our guys being shot down. But that's the way it starts." On 19 March, the deployment of French fighter jets over Libya began, and other states began their individual operations. Phase One started the same day with the involvement of the United States, United Kingdom, France, Italy and Canada.

On 24 March, NATO ambassadors agreed that NATO would take command of the no-fly zone enforcement, while other military operations remained the responsibility of the

³ Mary Ellen. O'Connell, "How to Lose a Revolution," *e-International Relations* (2011).

up of states previously involved, with NATO expected to take control as early as 26 March. The decision was made after meetings of NATO members to resolve disagreements over whether military operations in Libya should include attacks on ground forces. The decision will create a two-level power structure overseeing military operations. In charge politically will be a committee, led by NATO, that includes all states participating in enforcing the no-fly zone, while NATO alone will be responsible for military action.⁴ Royal Canadian Air Force Lieutenant-General Charles Bouchard has been appointed to command the NATO military mission.

After the death of Muammar Gaddafi on 20 October 2011, it was announced that the NATO mission would end on 31 October.

1.3 STATEMENT OF THE PROBLEM

Intervention in Libya had a questionable or weak basis in international law, but was carried out on the premise that they constituted humanitarian intervention aimed at preventing genocide, large-scale loss of life or ethnic cleansing. Since the start of the campaign, there have been allegations of violating the limits imposed upon the intervention by Resolution 1973 and by US law. Some critics of Western military interdiction suggested that, "If military action brings disaster to civilians and causes a humanitarian crisis, then it runs counter to the purpose of the UN resolution.". Italian Prime Minister Silvio Berlusconi, despite the substantial role his country played in the NATO mission, also spoke out against getting involved: *"This wasn't a popular uprising because Gaddafi was loved by his people, as I was able to see when I went to Libya."*

1.4 PURPOSE OF THE STUDY/RATIONALE

The rationale of the study is to establish to what extent humanitarian intervention erodes state sovereignty.

⁴Traynor, Ian; Watt, Nicholas (24 March 2011). "Nato To Oversee Libya Campaign after France and Turkey Strike Deal". *The Guardian*. Archived from the original on 24 March 2011.

1.5 OBJECTIVES OF THE STUDY

1. To examine the legal framework on humanitarian intervention
2. To determine the extent of state sovereignty in the United Nations organization
3. To examine whether the NATO intervention in Libya violated stated sovereignty
4. To determine the challenges to humanitarian intervention

1.6 RESEARCH QUESTIONS

1. What is the legal framework on humanitarian intervention
2. To what extent does state sovereignty exist in the United Nations organization
3. To what tent did the NATO intervention in Libya violate stated sovereignty
4. What are the challenges to humanitarian intervention

1.7 SIGNIFICANCE OF THE STUDY

Students- the study will be used by students of different disciplines for their research purposes.

Policy makers-the study will be useful to policy makers as a source of reference before deciding on a policy.

Lecturers-the study will be useful to lecturers in their research and lecture preparations

1.8 SCOPE OF THE STUDY

1.8.1 Geographical

Libya is a country in the Maghreb region of North Africa bordered by the Mediterranean Sea to the north, Egypt to the east, Sudan to the southeast, Chad and Niger to the south, and Algeria and Tunisia to the west. The three traditional parts of the country are Tripolitania, Fezzan and Cyrenaica. With an area of almost 1.8 million square kilometres (700,000 sq mi), Libya is the fourth largest country in Africa, and is the 17th

largest country in the world. Libya has the 10th-largest proven oil reserves of any country in the world.⁵

Libya extends over 1,759,540 square kilometres (679,362 sq mi), making it the 17th largest nation in the world by size. Libya is somewhat smaller than Indonesia in land area, and roughly the size of the U.S. state of Alaska. It is bound to the north by the Mediterranean Sea, the west by Tunisia and Algeria, the southwest by Niger, the south by Chad and Sudan and to the east by Egypt. Libya lies between latitudes 19° and 34°N, and longitudes 9° and 26°E.

At 1,770 kilometres (1,100 miles), Libya's coastline is the longest of any African country bordering the Mediterranean. The portion of the Mediterranean Sea north of Libya is often called the Libyan Sea. The climate is mostly extremely dry and desert like in nature. However, the northern regions enjoy a milder Mediterranean climate⁶

Natural hazards come in the form of hot, dry, dust-laden sirocco (known in Libya as the *gibli*). This is a southern wind blowing from one to four days in spring and autumn. There are also dust storms and sandstorms. Oases can also be found scattered throughout Libya, the most important of which are Ghadames and Kufra. Libya is one of the sunniest and driest countries in the world due to prevailing presence of desert environment.

1.8.2 Contextual

The Concept of Sovereignty

Sovereignty is the central organizing principle of the system of states. However, it is also one of the most poorly understood concepts in international relations. This confusion emerges from at least two sources. First, as will be discussed below, sovereignty is in fact a relatively recent innovation connected to the emergence of the nation-state as the primary unit of political organization. Second, what is more, a

⁵"Demographic Yearbook (3) Pop., Rate of Pop. Increase, Surface Area & Density" (PDF). United Nations Statistics Division

⁶Field Listings – Coastlines". CIA World Factbook.

number of contemporary issues have placed increasing limits on the exercise of sovereign authority. These two factors raise questions about the fixity of the concept of sovereignty often assumed by international relations scholars. A more sophisticated view of sovereignty now envisions states and non state actors as engaged in a continual process of renegotiating the nature of sovereignty.

At its core, sovereignty is typically taken to mean the possession of absolute ***authority within a bounded territorial space***. There is essentially an internal and external dimension of sovereignty. Internally, a sovereign government is a fixed authority with a settled population that possesses a monopoly on the use of force. It is the supreme authority within its territory. Externally, sovereignty is the entry ticket into the society of states. Recognition on the part of other states helps to ensure territorial integrity and is the entree into participating in diplomacy and international organizations on an equal footing with other states.

1.8.3 Theoretical

Given the emergence of a whole range of trans-border issues from economic globalization to the environment to terrorism, one of the key discussions surrounds whether the nation-state is obsolete as the best form of political organization to deal with these problems. Economic and social processes increasingly fail to conform to nation-state borders, making it increasingly difficult for states to control their territory, a central component of sovereignty. This raises important questions about the proper site of political authority. As governance structures are established at the global level to deal with the growing number of global problems, debate has ensued as to how to make these arrangements accountable and democratic.

Many organizations are state-based, such as the United Nations, the World Trade Organization, or the European Union. Therefore, in principle, states are firmly in control and any ceding of sovereign authority is in their interest to do so. However, bureaucracies, once established, often seek to carve out additional authority for

themselves. States also may find functional benefit in ceding authority to supranational organizations.⁷

What is more, a whole range of private organizations have emerged to infringe on sovereign authority as well. In addition to human rights NGOs discussed above, global civil society organizations have emerged around numerous issues. Civil society groups have had a growing, yet uneven, effect on nation-states and international organizations. In addition, as economic interdependence grows, private governance arrangements, such as the Bank for International Settlements, are also becoming more prevalent.[15] Private security organizations even conduct war on behalf of states, whether as mercenaries in western African civil wars or as contractors to the US military around the world.⁸

Together all of this suggests that the concept of sovereignty is under considerable pressure. Some aspects of sovereignty still exist and are honoured in most circumstances, but many inroads are being made into state authority by many actors in many different circumstances. Where this will lead has yet to be determined.

Dependency theory

Dependency theory is the theoretic basis of economic neo-colonialism, which proposes that the global economic system comprises wealthy countries at the center, and poor countries at the periphery. Economic neo-colonialism extracts the human and the natural resources of a peripheral (poor) country to flow to the economies of the wealthy countries at the center of the global economic system; hence, the poverty of the peripheral countries is the result of how they are integrated in the global economic

⁷] Haas, E. B. (1961). "International Integration: The European and the Universal Process." *International Organization* 15(3): 366-392.; Mitrany, D. (1943). *A Working Peace System: An Argument for the Functional Development of International Organization*. London, The Royal Institute of International Affairs.

⁸Meyer, J.W., Boli, J., Thomas, G.M., and Ramirez, F.O. (1997). *World Society and the Nation-State*. *American Journal of Sociology*. 103(1): 144-81.; O'Brien, R., Goetz, A.M., Scholte, J.A., and Williams, M. (2000). *Contesting Global Governance: Multilateral Institutions and Global Social Movements*. Cambridge: Cambridge University Press

system. Dependency theory derives from the Marxist analysis of economic inequalities within the world's system of economies, thus, the under-development of the Global South is a direct result of the development in the Global North; the theories of the semi-colony from the late 19th century. The Marxist perspective of the Theory of Colonial Dependency is contrasted with the capitalist economics of the free market, which propose that such poverty is a development stage in the poor country's progress towards full, economic integration to the global economic system. Proponents of Dependency Theory, such as Venezuelan historian Federico Brito Figueroa, who has investigated the socio-economic bases of neo-colonial dependency, have influenced the thinking of the former President of Venezuela, Hugo Chávez.

1.9 LIMITATIONS

Neo colonialism (also **Neo-colonialism** or Neo-imperialism) is the geopolitical practice of using capitalism, business globalization, and cultural imperialism to influence a country, in lieu of either direct military control or indirect political control, i.e. imperialism and hegemony. In post-colonial studies, the term *neo-colonialism* describes the influence of countries from the developed world in the respective internal affairs of the countries of the developing world; that, despite the decolonisation that occurred in the aftermath of the Second World War (1939–45), the (former) colonial powers continue to apply existing and past international economic arrangements with their former colony countries, and so maintain colonial control. A neo-colonialism critique can include *de facto*-colonialism (imperialist or hegemonic), and an economic critique of the disproportionate involvement of modern capitalist business in the economy of a developing country, whereby multinational corporations continue to exploit the natural resources of the former colony; that such economic control is inherently neo-colonial, and thus is akin to the imperial and hegemonic varieties of colonialism practiced by the

United States and the empires of Great Britain, France, and other European countries, from the 16th to the 20th centuries.⁹

1.10 METHODOLOGY

1.10.1 The research design

The design will be both descriptive and exploratory/Qualitative. This research method will involve describing in details specific situation using research tools content analysis. The researcher's aim is to gather an in-depth understanding of human behaviour and the reasons that govern such behavior. The qualitative method will help to investigate the why and how of decision making, not just what, where, and when.

1.10.2 Research Design

Qualitative research methods have been employed to undertake an analysis of the problem at hand, since the concern of this study has been to explore the driving forces of the prolonged naturalization process. Because of the persistent nature of this problem (the refusal to give up refugee status), the focus is on understanding the phenomenon rather than generalizing it to a broader level.

Exploratory research on the other hand seeks to generate *a posteriori* hypotheses by examining a data-set and looking for potential relations between variables. It is also possible to have an idea about a relation between variables but to lack knowledge of the direction and strength of the relation. If the researcher does not have any specific hypotheses beforehand, the study is exploratory with respect to the variables in question (although it might be confirmatory for others). The advantage of exploratory research is that it is easier make new discoveries due to the less stringent methodological restrictions. Here, the researcher does not want to miss a potentially interesting relation and therefore aims to minimize the probability of rejecting a *real* effect or relation.

⁹ . The ideology and praxis of neo-colonialism are discussed in the works of Jean-Paul Sartre (*Colonialism and Neo-colonialism*, 1964) and Noam Chomsky (*The Washington Connection and Third World Fascism*, 1979).

The method will expose the researcher to statutory formulations, analysis of legal concepts and fundamental formulations. In addition, the researcher will adopt multidisciplinary approach to the study relying and drawing generally from both primary and secondary data on the concept and formulations of development as a political and economic issue in order to generate materials that will aid in coming up with reasons to ground and situate the final analysis and conclusions of the researcher.

Observation method will be used for generating in-depth descriptions of events, for obtaining information that is otherwise inaccessible. This will enable the researcher to get a better understanding through firsthand experience, truthful reporting, and quotations of actual conversations; to understand how the participants derive meaning from their surroundings, and how their meaning influences their behaviour.

Procedure

Prepare questions in advance, and later analyze and report results. The interviewer guides the questions and focuses the study. The results are imposed obligations on both sides. The researcher will determine what is important, what is ethical, and the completeness and accuracy of the results.

1.10.3 Data analysis and presentation

Data will be checked against the evidence, screened to differentiate the most authoritative from the least authoritative based on either the quality or relevancy of the data to the research issue. Data will be graded by analyzing the legislation to understand its meaning and also the judicial decisions to derive the principle(s) of law; therefore legal analysis, and statistical inference will be applied.

1.10.4 Ethical Considerations

The researcher will be concerned with the impact of research upon the subjects. The researcher will particularly be objective and value free in approaching and reporting upon the subject matter, the informed consent of the research subjects will be sought

and obtained first and researcher will observe the principle of confidentiality to the later and that the information obtained is privileged and will be protected by the Institution.

CHAPTER TWO

2.0 LITERATURE REVIEW

2.1 STATE SOVEREIGNTY

A sovereign state is a political organization with a centralized government that has supreme independent authority over a geographic area. It has a permanent population, a government, and the capacity to enter into relations with other sovereign states. It is also normally understood to be a state which is neither dependent on nor subject to any other power or state. The existence or disappearance of a state is a question of fact. While according to the declaratory theory of state recognition a sovereign state can exist without being recognised by other sovereign states, unrecognised states will often find it hard to exercise full treaty-making powers and engage in diplomatic relations with other sovereign states.

The word "country" is often colloquially used to refer to sovereign states, although it means, originally, only a geographic region, and subsequently its meaning became extended to the sovereign polity which controls the geographic region.

International relations theorists have identified several key principles of the Peace of Westphalia, which explain the Peace's significance and its impact on the world today:

1. The principle of the sovereignty of states and the fundamental right of political self determination
2. The principle of legal equality between states
3. The principle of non-intervention of one state in the internal affairs of another state.

The foundational principle of the international legal order is the "sovereign equality" of states. "Sovereignty" in this sense refers, not to authority altogether beyond the reach of law, but to the reciprocal terms of the recognition that the members of an

international legal order confer on one another. Although the predication of international order on respect for the sovereignty of each member entity is traceable to the 1648 Peace of Westphalia – a point frequently highlighted by those seeking to portray the notion as outmoded – the legal implications of this sovereignty have varied markedly from era to era.

The current understanding of sovereign equality owes in part to the 1945 United Nations Charter, which exalts the concept,¹⁰ but even more to the geopolitical realities of the period from the late 1950s to the late 1980s. As Western and Socialist blocs turned from open confrontation to espousal of “containment” and “peaceful coexistence” (respectively), and as a Non-Aligned bloc emerged from decolonization to assert distinctive interests and values in the name of a “Third World,” the United Nations system became a platform for accommodation among international actors who recognized few common principles of legitimate and just internal public order.

Sovereign equality, so understood, has all the while drawn moral and political criticism from nearly every quarter – from liberal cosmopolitans, from conservative realists, from neoconservative unilateralists, and from advocates for groups marginalized by the international system. The changed material and ideational conditions of the early twenty-first century have further called into question the continued viability of sovereign equality as the foundational principle of the international legal order. Long-term structural changes inevitably will – and indeed, should – result in modifications to normative constructs developed in a bygone era.

Nonetheless, calls for sweeping reform need to confront an accurate unifying account, and a properly qualified moral and political defence, of the existing legal framework. It is by no means clear that the core elements of that pluralistic framework are outmoded or dysfunctional. The foundations of the United Nations system reflect persistent, albeit bounded, disagreement within its membership as to fundamental principles of political

¹⁰ United Nations Charter Article 2 para 1

morality. While the boundaries of the system's pluralism have narrowed progressively in the course of the United Nations era – excluding conquest and genocide from the outset, colonialism and *apartheid* in the 1960s and '70s, and "ethnic cleansing" and peculiarly unpopular and violent seizures of state power in the 1990s – accommodation of diversity in modes of internal political organization remains a durable theme of the international order. This accommodation of diversity underlies the international system's commitment to preserve states' territorial integrity and political independence, often at the expense of other values.

The persistence of sovereign prerogative within international legal doctrine is especially unpopular with certain human rights-oriented scholars – advocates for expansive assertions of *jus cogens* (non-consent-based norms), universal jurisdiction, and humanitarian intervention – for whom international legality represents the promise of a global justice that transcends territorial limitations as well as political, ideological, and cultural differences. Yet one can posit, *contra* this "transcendent justice" approach, a more modest project of international legality, based on a recognition that fundamental disagreement about principles of just public order constitutes, at least for the time being, an ineradicable aspect of the human condition. An alternative jurisprudence of "bounded pluralism" may vindicate the essence of the currently-prevalent doctrinal structure, even if not each and every victory of state prerogative. Moreover, because international obligations on matters of internal public order and international strictures on (even righteous) cross-border exercises of power operate on separate legal planes, one can concede the inviolability of illiberal systems of internal public order without withholding judgment on the duly incurred legal obligations— let alone the moral duties – that states owe to their own nationals. Contemporary normative political theory has given little systematic attention to the distinctive problems of international legal order.

11

¹¹ Allen Buchanan's recent book, *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law* (Oxford University Press, 2004), points out and seeks to remedy this deficit.

Theorists of human rights have typically sought to derive universally applicable standards of internal public order from first principles, without much regard to the implications for the international system of the empirical reality of conflicting political moralities.¹² Theorists of "ethics and international affairs" have been more concerned to develop moral standards for a given state's external behaviour in discrete subject areas (e.g., the criteria of "just war") than to formulate a legal framework for coexistence and cooperation among non-likeminded states.

Even John Rawls's path-breaking late work on a liberal *ethos* of relations with non liberal political communities did not purport to provide a blueprint for an international public order; whatever implications Rawls expected his "law of peoples" to have for international law, he understood his enterprise as the development of moral rather than strictly legal standards, recognizing that the latter would need to take account of practical considerations beyond the scope of his project.¹³ It is one project to develop guidelines for unilateral action in the absence of a positive legal order, and quite another to prescribe reforms to the standards and processes that govern an existing (even if only partially efficacious) multilateral order, or to establish thresholds for unilateral *ad hoc* flouting of applicable positive norms that impede morally desirable action in particular instances.

2.2 HUMANITARIAN INTERVENTION

Several authors have noted how the principles of order and justice in international relations are most starkly contrasted over the question of humanitarian intervention.¹⁴ The requirement for international order demands respect of state sovereignty while

¹² Michael Walzer's brief defense of non-intervention doctrine in *Just and Unjust Wars* (New York: Basic Books, Inc., 1977) and his more elaborate response to critics of that defense, Walzer, "The Moral Standing of States," *Phil. & Pub. Aff.* 9 (1980), 209.

¹³ John Rawls, *The Law of Peoples* (Cambridge, Mass: Harvard University Press, 1999).

¹⁴ N. Wheeler, "Pluralist or Solidarist Conceptions of International Society: Bull and Vincent on Humanitarian Intervention," *Millennium*, 21, no 3 (Winter 1992); and N. Wheeler and J. Morris, "Humanitarian Intervention and State Practice at the End of the Cold War," in Rick Fawn and Jeremy Lankins, eds., *International Society After the Cold War: Anarchy and Order Reconsidered* (London: Macmillan, 1996)

calls for justice by alleviating human suffering and rights abuses disregard the "presumption of non-intervention." As James Mayall has noted, this dilemma of humanitarian intervention is best understood by juxtaposing solidarist and pluralist conceptions of international society.¹⁵

According to Olivier¹⁶, a new notion of contingent sovereignty seems to be emerging, but it has not yet reached the point of international legitimacy. Neo-conservatism in particular has developed this line of thinking further, asserting that a lack of democracy may foreshadow future humanitarian crises, or that democracy itself constitutes a human right, and therefore nation states not respecting democratic principles open themselves up to just war by other countries. However, proponents of this theory have been accused of being concerned about democracy, human rights and humanitarian crises.

A solidarist conception of international society is based on the belief that there is a community of mankind, current or potential, that transcends the society of sovereign states. This cosmopolitan society has its origins in the notion, best articulated by Immanuel Kant, that human beings are moral ends in themselves and not simply the objects of a state or means to its existence.¹⁷ A belief in the inherent value of individuals leads directly to a requirement for human rights. Human rights are best described as universal rights that all people have by virtue of being members of the human race:

Donnelly asserts that¹⁸, because being human cannot be renounced, lost or forfeited, human rights are inalienable. In practice not all people *enjoy* all their human rights, let alone enjoy them equally. Nonetheless, all human beings have the same human rights and hold them equally and inalienably. Such universality was recognized by the United

¹⁵ James Mayall, ed., *The New Interventionism 1991-1994* (Cambridge: Cambridge University Press, 1996), p. 3.

¹⁶ Olivier, Michèle (October 3, 2011). "Impact of the Arab Spring: Is democracy emerging as a human right in Africa?". *Rights in focus discussion paper*. Consultancy Africa Intelligence. Retrieved 2012-01-16.

¹⁷ H. Reiss, ed., *Kant: Political Writings* (Cambridge: Cambridge University Press, 1996), p. 18.

¹⁸ J. Donnelly, *International Human Rights* (Oxford: Westview, 1993), p. 19

Nations General Assembly in the preamble of the Universal Declaration of Human Rights in 1948, in stating that "the inherent dignity ... and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."¹⁹

Best²⁰ has it that, obligation leads to the solidarist assertion that states are responsible mainly for the preservation and promotion of their citizens' welfare. While individuals have obligations to respect one another's rights, it is in the context of society, organized as a state, that humans are best able to realize their rights. Herein lies a great dilemma: "The . . . fundamental freedoms asserted by human rights law are very largely rights to be exercised against state power; yet it is state power itself which is expected to protect those rights."

A solidarist conception of international society does not deny the necessity or legitimacy of the state's role in ordering the relations and pursuing the interests of its citizens. Rather, solidarists question whether a state has any moral legitimacy independent of the people within its borders: ". . . states qua states do not think or will or act in pursuit of ends; only people . . . alone or in groups, do these things. Unless some independent sense can be given to the idea of the state as a moral agent, this view cannot be very persuasive."²¹

The primary responsibility of the state is to organize society and provide for the welfare of its citizens and this is recognized in the concept of sovereignty. The sovereign authority of states implies that each enjoys autonomy and freedom from external interference in pursuing its interests. Solidarists argue, though, that this autonomy must not be seen as absolute, but rather within the context of human rights. They believe it

¹⁹*The United Nations and Human Rights* (New York: UN Department of Public Information, 1995), p. 153.

²⁰ G. Best, "Justice, International Relations and Human Rights," *International Affairs*, 71, no. 4 (October 1995), p. 788.

²¹ Charles Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979), p. 76.

is in order to protect the rights of its citizens, promote their welfare and pursue their common ends that a state requires freedom from external interference. If a state government is failing to meet its obligations in fulfilling the basic human rights of its citizens, solidarists suggest there is no reason to recognize its claim to sovereign authority as legitimate.

This is precisely the point Fernando Teson makes in asserting that "a government that engages in substantial violations of human rights betrays the very purpose for which it exists and so forfeits not only its domestic legitimacy, but its international legitimacy as well."²² If such a government loses its claim to legitimacy there are two important implications. First, it loses its claim to autonomy and freedom from external interference. Second, the obligation to protect the human rights of its citizens ultimately defaults to all of humanity. Given that the community of humans is for practical purposes organized into states, the policing of human rights abuses is best dealt with by the society of states.

Solidarists point to Chapter VII of the UN Charter as providing the legal basis for intervention in the event of gross human rights abuses. Article 42 of this chapter authorizes the Security Council to "take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security."²³ Under Article 43, "all members undertake to make available to the Security Council . . . armed forces" for the purposes of enforcement, although this task may be delegated to specific states to carry out on behalf of the UN. Of particular note is the 1948 Convention on Genocide which makes genocide a crime under international law and commits all members to "prevent and punish" it.

Solidarists assert that human rights violations and widespread suffering cause instability and thereby threaten international peace. The authors of the Universal Declaration of

²² Fernando Teson, *Humanitarian Intervention: An Inquiry Into Law and Morality* (New York: Transnational, 1988), p. 15.

²³ *The United Nations Charter* (New York: UN Department of Public Information, 1991), p.

Human Rights seem to acknowledge this in stating that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected." Since violent human rights abuses and large-scale human suffering threaten international peace and stability, the UN may intervene forcefully to preserve them.

A solidarist conception of international society, then, argues that all humans are ends in themselves and thus possess basic inalienable human rights. While human rights are best realized within the context of sovereign states, a state may lose its claim to non-interference if it fails to protect these basic rights for its citizens. The international community is justified, and the UN Security Council is authorized under international law, to intervene in a sovereign state to safeguard basic human rights. The maintenance of order does not preclude the pursuit of justice in international society; the former does not and must not always "trump" the latter. This is the solidarist argument in favor of humanitarian intervention.

On the other hand, a pluralist conception of international society denies the existence of basic human rights and is based on the belief that no common community of mankind exists. Pluralists argue that a variety of political cultures, based on different moral values, exists among the society of states. In order to protect these values and preserve the distinct ways of life of each state's citizens, pluralists believe the principles of sovereignty and non-intervention are key to both order and justice in the international community.

Pluralists do not deny that certain rights and duties exist in international society, but claim these only exist with regard to states and not peoples, noting that the members of the United Nations are undisputedly the former and not the latter. They point to Article 2(7) of the UN Charter which recognizes the sovereign equality of all states and declares "nothing [in the Charter] shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state." More to the point, they argue, the 1970 Declaration on Principles of International Law is proof of

acceptance by the international community of the principle of non-intervention as a basis for stability: ". . . the practice of any form of intervention not only violates the spirit and the letter of the Charter, but also leads to the creation of situations which threaten international peace and security. . . ."24

Based on the above, pluralists criticize the solidarist advocacy of humanitarian intervention on three main grounds: first, cultural relativism; second, the importance of maintaining order; and third, the effectiveness of humanitarian intervention. Each of these criticisms is serious and requires some consideration.

The argument for cultural relativism is based on the assertion that there is no universal conception of human rights. Advocates of cultural relativism note that it is only Western democracies that place great emphasis on human rights, while in many other parts of the world individual freedoms rank below the needs of family or community. R.J. Vincent summarizes well the case for cultural relativism:

Vincent also states that, there is no universal morality, because the history of the world is the story of the plurality of cultures, and the attempt to assert universality . . . as a criterion of all morality, is a more or less well-disguised version of the imperial routine of trying to make the values of a particular culture general.²⁵ One common explanation of the relative difference between cultures has the "first world" emphasizing civil and political rights, the "second world" (socialist) emphasizing economic and social rights and the "third world" emphasizing self-determination of peoples and economic development.²⁶ None of these rights are mutually exclusive, but different societies do give them quite different priorities. In order to preserve and protect cultural distinctiveness, state sovereignty must be respected, thereby creating a "presumption against intervention."

²⁴ Adam Roberts, "Humanitarian War: Military Intervention and Human Rights," *International Affairs*, 69, no. 3 (July 1993), p. 433.

²⁵ Vincent, *Human Rights and International Relations*, pp. 37-38.

²⁶ Donnelly, *International Human Rights*, p. 33.

However, as Simon Caney has noted, there are two weaknesses to this argument. First, it denies any commonality of values among the world's cultures when in fact some consistency does exist:

All cultures, be they Islamic, Hindu, Buddhist, secular or Christian, value the sanctity of human life. Similarly, it is difficult to think of any culture that welcomes drought, famine, disease, murder and malnutrition. Consequently cosmopolitan principles of humanitarian intervention that seek to eradicate these are not imposing values on societies which those societies reject.²⁷

No society asserts mass murder or the infliction of suffering on others as a cultural value. The second weakness is that it equates cultures with states, assuming that all governments promote pluralism and protect the cultural values of their citizens. Again, Caney suggests:

In some situations intervention may . . . be required in order to protect and foster diversity. Consider a situation in which a state is persecuting a cultural minority. In such a scenario humanitarian intervention can be justified if it prevents this state of affairs and protects the minority.²²

Clearly, then, there is a basic level of human rights that all cultures value and which states are required to protect. Thus, states have no claim to absolute sovereignty on the basis of cultural uniqueness if they constantly abuse basic human rights.

Even if a basic set of human rights is accepted across all cultures, many argue that there is no international consensus on specifically what these rights are, what priority they have and which would have to be violated to justify intervention. This criticism is of a different nature because, while accepting that "in theory" there may be basic human rights, it argues that "in practise" they are not currently definable. Or as Adam Roberts writes:

²⁷ Simon Caney, "Human Rights and the Rights of States: Terry Nardin on Nonintervention," *International Political Science Review*, 18, no. 1 (1997), p. 34.

Any attempt to devise a general justification for humanitarian intervention, even if such a doctrine were to limit intervention to very extreme circumstances, would run into difficulty. A blind humanitarianism, which fails to perceive the basic truth that different states perceive social and international problems very differently, can only lead into a blind alley. Indeed, advocacy of any general principle of humanitarian intervention could well make some states more nervous than before about international discussion of human rights, since they might see this as a stalking horse for intervention.

This is a valid point, however, the difficulty of achieving a consensus should not preclude the international community from attempting such a project. Moreover, if talk of humanitarian intervention might encourage some states to withdraw from the discussion, a lack of international will to address the subject might encourage others to continue, or even increase, human rights abuses within their borders.

The argument for armed humanitarian intervention will always be made in extreme cases and will not develop into a general license to interfere in the domestic affairs of states:

Not every evil, nor every violation of human rights, therefore, merits external intervention, even when it takes such grotesque and unacceptable forms as apartheid, human sacrifice, bonded labour, female infanticide, untouchability, and racial or religious discrimination. In many cases, influencing the state by other means is enough to achieve the desired results.²⁸

Thus, while there is great cultural diversity in the world, all cultures value the preservation of human life and freedom from serious suffering. This implies that intervention is justified when lives are threatened or there is human suffering on a large scale. The difficulty of defining conditions for international humanitarian intervention should not stop the international community from trying to do so. The arguments of

²⁸ B. Parekh, "Rethinking Humanitarian Intervention," *International Political Science Review*, 18, no. 1 (1997), p. 65.

cultural relativism, then, do not preclude intervention in the event of a humanitarian crisis; rather they make us cautious in proceeding.

Dangerous Precedents

Arguments against humanitarian intervention based on the dangers of establishing precedents raise concerns with regards to the collapse of international order and the potential for abuse or selectivity. Concern over the collapse of order due to an erosion of the principle of state sovereignty is at best alarmist. It fails to take into consideration that the concept of sovereignty has taken several centuries to develop and that it continues to evolve. It is reasonable to expect that norms of humanitarian intervention will also take considerable time to develop as international society continues to modify and adapt notions of state sovereignty.

Besides alarmism, the concern over dangerous precedents unjustifiably places an emphasis on issues of order and non-intervention over those of justice. The preference for order and the principle of sovereignty is wrongly presented as an objective, and thus more desirable, goal while justice and the principle of intervention are characterized as having bias toward a particular moral view.

Non-intervention is not, as Vincent put it, an 'amoral' principle. It is rooted in a substantive conception of how the world should be arranged of which a necessary element is the belief that there is no 'coherent and pervasive morality which transcends international frontiers and which might then inform and justify particular acts of intervention.' To one who holds a conflicting belief, the non-intervention principle would not be a neutral principle at all.²⁹

Thus, while arguing that humanitarian interventions may establish destabilizing international precedents, advocates of this position neglect to consider the dangers of establishing precedents based on ignoring widespread human rights abuses. As Caney

²⁹Beitz, *Political Theory and International Relations*, p. 89.

observes, "the problem is that it is not clear why international order is assumed to be unconditionally valuable . . . if a state of affairs is unjust and exploitive it is far from clear that stabilizing it is desirable."³⁰ If the international community established precedents for intervening on humanitarian grounds in cases of gross human rights abuses or suffering, it is far from clear why this would be undesirable.

The second charge with regard to establishing dangerous precedents is that it is open to abuse or selectivity. Both of these concerns are valid and are based on the likelihood that states will intervene to serve their own interests and not humanitarian interests. If a general right of humanitarian intervention was recognized by the international community, it could be used as an excuse by any state to interfere in the affairs of another. Historically, such abuses have occurred. Michael Walzer has written that an historical study of interventions reveals: ". . . clear examples of what is called 'humanitarian interventions' are very rare. Indeed, I have not found any, but only mixed cases where the humanitarian motive is one among several."

However, most such interventions have been unilateral and have been roundly condemned by the United Nations and its members.³¹ It must be remembered that the type of action under discussion in this article is armed intervention under the auspices of the United Nations. The requirement for an international consensus based on the support of the Security Council should prevent abuse of the principle by one or even several powers.

If the UN Security Council authorises an intervention, the risks of competitive chaos and insecurity and of pursuit of unilateral advantage may be greatly reduced. The role of the UN, especially the Security Council, has given a degree of international legitimacy to

³⁰ Caney, "Human Rights," p. 30.

³¹ Wheeler and Morris, "Humanitarian Intervention," pp. 142-44. The authors cite as examples India's intervention in East Pakistan (1971), Tanzania's intervention in Uganda (1978) and Vietnam's intervention in Cambodia (1979)

uses of force that might otherwise have been open to extensive criticism.³² Such multilateralism has long been associated with legitimacy and it must continue to be considered key for humanitarian interventions.³³

Selectivity is a significant concern, particularly given the monopoly of control that the permanent members (the United States, the United Kingdom, France, Russia and China) exercise over the Security Council. If a security or humanitarian crisis does not affect one or more of these great powers, it is unlikely to be given much emphasis in the Security Council agenda. Crises in more obscure regions of the world depend on the UN Secretariat's methodical but time-consuming process for identifying issues requiring international attention or action.

With regard to selectivity, it can only be suggested that while every case of human rights abuse may not be treated in the same manner or resolved with the same determination by the international community, this does not mean all such attempts are futile. Selectivity is likely to exist for some time, however, if the aim is to deal one day with all human rights abuses, the first step is to deal with some, and eventually most, of the worst cases.

Arguments in favour of maintaining order, then, are overly alarmist and place too high a moral value on the principle of state sovereignty. Recognizing a right to humanitarian intervention will not result in international anarchy and sanctioning by the United Nations should prevent abuse and selectivity from becoming the norm.

A third criticism of humanitarian intervention is that it is largely ineffective. Military intervention, it is argued, is a simple and short-term solution to complex and long-term problems. In short, it is too little too late. No doubt, there is a great deal of truth to this criticism. Eradicating human suffering and firmly establishing basic human rights must

³² Adam Roberts, "Humanitarian Action in War," *Adelphi Paper*, No. 305 (December 1996), p. 21.

³³ P. Malanczuk, *Humanitarian Intervention and the Legitimacy of the Use of Force* (Amsterdam: 1993), p. 9.

be seen as a long-term project of economic and social development encouraged by international assistance to countries in need.

However, two points must be made regarding this argument. First, if long-term development is taken as the alternative to humanitarian intervention it is clear that the international community is failing in this regard:

If, as R.J. Vincent argues, seriousness about human rights is tested by success in addressing the human wrongs of poverty and starvation . . . 'we liberals' are failing massively to address what Henry Shue calls the 'holocaust of neglect'. . . the 'silent genocide' of slow death through poverty and malnutrition of millions on this planet is seemingly accepted as a natural and inevitable condition of global politics.³⁴

Second, even if the international community was committing serious effort and resources to long-term development programs, this would still not preclude short-term decisive action in the event of a major humanitarian crisis. In an examination of military responses to humanitarian crises Barry Posen, while arguing that armed intervention is highly problematic, claims that there is the potential to save lives given the right circumstances and a sufficient commitment of resources. If the ultimate goal is the protection and promotion of human rights, then clearly a variety of available means must be considered to achieve this end.

Solidarist and pluralist conceptions of international society have been examined with regard to humanitarian intervention. It has been suggested that, in keeping with a solidarist conception of humanity, all humans are ends in themselves and thus have a claim to basic human rights. It is in the context of sovereign states that humans are currently best able to realize their common rights. While respect for pluralism or the cultural uniqueness of different societies requires that states do not normally interfere in one another's affairs, this autonomy is not absolute. States which fail to provide for

³⁴ N. Wheeler, "Agency, Humanitarianism and Intervention," *International Political Science Review*, 18, no. 1, p. 20.

the most basic rights of their citizens lose their claim to complete autonomy and the international community must by default step in to protect human lives.

Humanitarian intervention can be criticized on grounds of cultural relativism, the threat it poses to international order and its overall effectiveness. However, these concerns do not rule out such international action but rather demonstrate the need for prudence and consideration on a case by case basis. The UN Charter and international law permit intervention under Chapter VII, if one accepts that human rights are not just a domestic affair and have implications for international peace and security as a whole. Even pluralists will acknowledge that "humanitarian intervention is justified when it is in response to acts 'that shock the moral conscience of mankind.'"³⁵ It is simply unclear from their perspective how much "shock" is required to trigger an intervention.

Really, then, solidarist and pluralist conceptions of international society both admit to justifications for humanitarian intervention, albeit to quite different degrees. Solidarists forcefully advocate intervention to protect human rights and prevent suffering. Ultimately, pluralists recognize that occasionally intervention may be justified, but argue for extreme caution and prudence in so doing. Having established that intervention on humanitarian grounds is justified in cases of gross human rights abuses or catastrophic human suffering, it is necessary to determine whether this justification is recognized by the international community.

While the debate over humanitarian intervention is centuries old, it has enjoyed a minor renaissance since the end of the Cold War. International crises that previously would have been viewed through the lenses of east-west rivalries are now being approached in a more pragmatic, if not cooperative, manner. However, if humanitarian intervention is justified in theory, as has been argued above, recognition of the principle in practise has been tenuous at best. A review of recent studies of humanitarian intervention

³⁵Walzer, *Just and Unjust Wars*, p. 107.

demonstrates that there is only precarious acceptance of a norm for such action within the international community.

While there is a general consensus that there are some positive changes taking place in the international protection of human rights, the degree of change and its future direction are highly contested. Nicholas Hopkinson argues that "the view now prevailing is that the observance of fundamental human rights know no national boundaries and therefore should no longer be disregarded on account of state sovereignty."³⁶ Significantly, W. Ofuatey-Kodje observes that:

The Security Council stated explicitly that there is a connection between human rights violation and threats to peace and security, when it declared categorically that 'non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security' [UN Doc. S/PV 3046].

Marrack Goulding, former Under-Secretary-General for Peacekeeping Operations, believes that the new willingness of the UN to use force in support of peace "could represent a decisive moment in the development of the organization."³⁷

However, countering this apparent support for an "embryonic" norm of humanitarian intervention are protestations that recent examples of UN military action are largely inconclusive on the issue. Several recent studies of post-cold war UN actions reveal only marginal international acceptance of a principle of intervention on humanitarian grounds. While reviewing recent examples of intervention is beyond the scope of this article, it is worth summarizing the conclusions of some writers in this regard.

Studies of international intervention in Iraq, Yugoslavia and Somalia have suggested that while humanitarian concerns were raised in the respective Security Council

³⁶ Nicolas Hopkinson, "Humanitarian Intervention," *Wilton Park Papers*, no. 110 (1996), p. 7.

³⁷ MarrackGoulding, "The Evolution of United Nations Peacekeeping," *International Security*, 69, no. 3 (July 1993), p. 461.

Resolutions, none of these cases fits well the definition of humanitarian intervention.³⁸ The intervention to aid the Kurds was humanitarian in focus but it was conducted with the reluctant acquiescence of the Iraqi government and must be viewed largely within the context of the Gulf War.

In the former Yugoslavia, the United Nations Protection Force (UNPROFOR) mission in Bosnia was no doubt humanitarian in its aims. However, even though the UNPROFOR mandate was renewed under Chapter VII, it was conducted largely with the consent of the warring factions.

It is generally agreed that among the three, by far the best example of humanitarian intervention was Somalia. There the United States-led Unified Task Force (UNITAF) was mandated under Chapter VII to employ "all necessary means to establish a secure environment for humanitarian relief operations in Somalia." While it has been suggested that UNITAF was not an "intervention" *per se*, because there was no national government in existence at the time, there can be no doubt it was a significant landmark in the willingness of the international community to employ force to fulfil humanitarian objectives.

Based on the above, it can be observed that, in spite of some convincing arguments and signs of progress, there is only marginal recognition of a principle of humanitarian intervention within the international community. Humanitarian concerns have proven to be important factors in recent UN actions, but far from the only ones. The absence of a well-established international norm of humanitarian intervention is thus a serious obstacle to the international community responding decisively to humanitarian crises. With this in mind, it is now necessary to look specifically at the case of Rwanda to determine if the embryonic norm of humanitarian intervention was advanced and what other obstacles may have prevented international action.

³⁸Malanczuk, *Humanitarian Intervention*; James Mayall, "Intervention Revisited? Non-intervention, Self-determination and the 'New World Order,'" *Millenium*, vol 67, no. 3 (July 1991); Roberts, "Humanitarian Action"; D. Sarooshi, "Humanitarian Intervention and International Humanitarian Assistance: Law and Practise," *Wilton Park Paper*, no. 86 (1994); and Wheeler and Morris, "Humanitarian Intervention."

2.3 NATO INTERVENTION IN LIBYA

The **North Atlantic Alliance**, is an intergovernmental military based on the North Atlantic Treaty which was signed on 4 April 1949. The organization constitutes a system of collective defence whereby its member states agree to mutual defence in response to an attack by any external party. The creation of NATO can be seen as the primary institutional consequence of a school of thought called Atlanticism which stressed the importance of trans-Atlantic cooperation.³⁹

The members agreed that an armed attack against any one of them in Europe or North America would be considered an attack against them all. Consequently they agreed that, if an armed attack occurred, each of them, in exercise of the right of individual or collective self-defence, would assist the member being attacked, taking such action as it deemed necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area. The treaty does not require members to respond with military action against an aggressor. Although obliged to respond, they maintain the freedom to choose the method by which they do so. This differs from Article IV of the Treaty of Brussels, which clearly states that the response will be military in nature. It is nonetheless assumed that NATO members will aid the attacked member militarily. The treaty was later clarified to include both the member's territory and their "vessels, forces or aircraft" above the Tropic of Cancer, including some overseas departments of France.

During the Libyan Civil War, violence between protestors and the Libyan government under Colonel Muammar Gaddafi escalated, and on 17 March 2011 led to the passage of United Nations Security Council Resolution 1973, which called for a ceasefire, and authorized military action to protect civilians. A coalition that included several NATO members began enforcing a no-fly zone over Libya shortly afterwards. On 20 March

³⁹Straus, Ira (June 2005). "Atlanticism as the core 20 the century U.S. strategy for internationalism" (PDF). *Streit Council*. Annual Meeting of the Society of Historians of American Foreign Relations. Retrieved 10 July 2013.

2011, NATO states agreed on enforcing an arms embargo against Libya with Operation *Unified Protector* using ships from NATO Standing Maritime Group 1 and Standing Mine Countermeasures Group 1,⁴⁰ and additional ships and submarines from NATO members. They would "⁴¹monitor, report and, if needed, interdict vessels suspected of carrying illegal arms or mercenaries".

On 24 March, NATO agreed to take control of the no-fly zone from the initial coalition, while command of targeting ground units remained with the coalition's forces NATO began officially enforcing the UN resolution on 27 March 2011 with assistance from Qatar and the United Arab Emirates.⁴²

The military intervention in Libya has been cited by the Council on Foreign Relations as an example of the responsibility to protect policy adopted by the UN at the 2005 World Summit. According to Gareth Evans, "the international military intervention (SMH) in Libya is not about bombing for democracy or Muammar Gaddafi's head. Legally, morally, politically, and militarily it has only one justification: protecting the country's people." However, the Council also noted that the policy had been used only in Libya, and not in countries such as Côte d'Ivoire, undergoing a political crisis at the time, or in response to protests in Yemen. A CFR expert, Stewart Patrick, said that "There is bound to be selectivity and inconsistency in the application of the responsibility to protect norm given the complexity of national interests at stake in the calculations of other major powers involved in these situations." In January 2012, the Arab Organization for Human Rights, Palestinian Centre for Human Rights and the International Legal

⁴⁰Burns, Robert (10 June 2011). "Gates blasts NATO, questions future of alliance", *Washington Times*. Retrieved January 29, 2013

⁴¹Protocol to the North Atlantic Treaty on the Accession of Greece and Turkey". *NATO*. 4 April 1949. Retrieved 17 January 2012.

⁴²O'Sullivan, Arie (31 March 2011). "UAE and Qatar pack an Arab punch in Libya operation". *Jerusalem Post*. Retrieved January 29, 2013.

Assistance Consortium published a report describing alleged human rights violations and accusing NATO of war crimes.⁴³

⁴³Shabi, Rachel (19 January 2012). "Nato accused of war crimes in Libya". *The Independent*.

CHAPTER THREE

3.0 LEGAL FRAMEWORK

This chapter reviews the main elements in the legal regime on the use of force. These begin with the UN Charter, and other treaties, such as the Genocide Convention, and other organizations, such as the African Union and NATO. Customary and treaty laws on self-defence are relevant as well. Together, these pieces help define the legal conditions under which states can use force against others. They constitute the current legal environment in which war is conducted. The second section considers how humanitarian intervention fits into this environment. It examines the evidence that humanitarian intervention is illegal and then the arguments for its legality.

The United Nations, formed in the aftermath of World War II to promote peace and stability, recognizes the importance of sovereignty, especially for newly independent nations or those seeking independence from colonizers.

The UN Charter says: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state." The principle does not rule out the application of enforcement measures in case of a threat to peace, a breach of peace, or acts of aggression on the part of the state.

The Genocide Convention of 1948 also overrode the non-intervention principle to lay down the commitment of the world community to prevent and punish.

The concept of humanitarian intervention has evolved as a subset of the laws governing the use of force and has very quickly come to occupy an institutional position alongside self-defence and Security Council authorization as a legal and legitimate reason for war. It is both widely accepted and yet still highly controversial. This article considers whether humanitarian intervention is legal under international law. This is a common question but one that produces an uncertain answer: humanitarian intervention appears

to contradict the United Nations Charter, but developments in state practice since it might have made it legal under certain circumstances.

Those who argue for its legality cite state practice and international norms to support the view that the prohibition on war is no longer what it appears to be in the Charter. The debate suggests that humanitarian intervention is either legal or illegal depending on one's understanding of how international law is constructed, changed, and represented. Since these questions cannot be answered definitively, the uncertainty remains fundamental, and the legality of humanitarian intervention is essentially indeterminate. No amount of debate over the law or recent cases will resolve its status; it is both legal and illegal at the same time.

To the extent that state practice alters the meaning of international law, the distinction between compliance and non-compliance is unsustainable. Disputes over compliance and noncompliance are proxies for disagreements over the substantive behaviours in question, and they cannot be resolved by reference to the rules themselves. As I argue, international law should be seen as a resource that is used by states, rather than as a fixed standard against which we can assess behaviour.

3.1 The Law on the Use of Force

The **use of force by states** is controlled by both customary international law and by treaty law. The UN Charter reads in article 2(4):

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.

Although some commentators interpret Article 2(4) as banning only the use of force directed at the territorial integrity or political independence of a state, the more widely held opinion is that these are merely intensifiers, and that the article constitutes a general prohibition, subject only to the exceptions stated in the Charter (self-defence

and Chapter VII action by the Security Council). The latter interpretation is also supported by the historic context in which the Charter was drafted, the preamble specifically states that "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind" is a principal aim of the UN as such.

This principle is now considered to be a part of customary international law, and has the effect of banning the use of armed force except for two situations authorized by the UN Charter. Firstly, the Security Council, under powers granted in articles 24 and 25, and Chapter VII of the Charter, may authorize collective action to maintain or enforce international peace and security. Secondly, Article 51 also states that: "Nothing in the present Charter shall impair the inherent right to individual or collective self-defence if an armed attack occurs against a state." There are also more controversial claims by some states of a right of humanitarian intervention, reprisals and the protection of nationals abroad.

3.2 Collective action

The Security Council is authorized to determine the existence of, and take action to address, any threat to international peace and security. In practice this power has been relatively little-used because of the presence of five veto-wielding permanent members with interests in a given issue. Typically measures short of armed force are taken before armed force, such as the imposition of sanctions.

3.3 Self-defence

Article 51:

Nothing in the present Charter shall impair the inherent right of collective or individual self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the

authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Thus there is still a right of self-defence under customary international law, as the International Court of Justice (ICJ) affirmed in the *Nicaragua Case* on the use of force. Some commentators believe that the effect of Article 51 is only to preserve this right when an armed attack occurs, and that other acts of self-defence are banned by article 2(4). The more widely held opinion is that article 51 acknowledges this general right, and proceeds to lay down procedures for the specific situation when an armed attack does occur. Under the latter interpretation, the legitimate use of self-defence in situations when an armed attack has not actually occurred is still permitted. It is also to be noted that not every act of violence will constitute an armed attack. The ICJ has tried to clarify, in the *Nicaragua case*, what level of force is necessary to qualify as an armed attack.

The traditional customary rules on self-defence derive from an early diplomatic incident between the United States and the United Kingdom over the killing on some US citizens engaged in an attack on Canada, then a British colony. The so-called *Caroline* case established that there had to exist "a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment of deliberation," and furthermore that any action taken must be proportional, "since the act justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it." These statements by the US Secretary of State to the British authorities are accepted as an accurate description of the customary right of self-defence.

3.3.1 Pre-emptive force

There is a limited right of pre-emptive self-defence under customary law. Its continuing permissibility under the Charter hinges on the interpretation of article 51. If it permits self-defence only when an armed attack has occurred, then there can be no right to

pre-emptive self defence. However, few observers really think that a state must wait for an armed attack to actually *begin* before taking action. A distinction can be drawn between "preventive" self-defence, which takes place when an attack is merely possible or foreseeable, and a permitted "interventionary" or "anticipatory" self-defence, which takes place when an armed attack is imminent and inevitable. The right to use *interventionary*, pre-emptive armed force in the face of an imminent attack has not been ruled out by the ICJ. But state practice and *opinio juris* overwhelmingly suggests that there is no right of *preventive* self-defence under international law.

3.4 States sovereignty- the Peace of Westphalia in 1648

Westphalian sovereignty is the concept of nation-state sovereignty based on territoriality and the absence of a role for external agents in domestic structures. It is an international system of states, multinational corporations, and organizations that began with the Peace of Westphalia in 1648.

Sovereignty has taken on a different meaning with the development of the principle of self-determination and the prohibition against the threat or use of force as *jus cogens* norms of modern international law. The United Nations Charter, the Declaration on Rights and Duties of States, and the charters of regional international organisations express the view that all states are juridically equal and enjoy the same rights and duties based upon the mere fact of their existence as persons under international law. The right of nations to determine their own political status and exercise permanent sovereignty within the limits of their territorial jurisdictions is widely recognised.

3.5 STATE RESPONSIBILITY

The laws of state responsibility are the principles governing when and how a state is held responsible for a breach of an international obligation. Rather than set forth any particular obligations, the rules of state responsibility determine, in general, when an obligation has been breached and the legal consequences of that violation. In this way

they are "secondary" rules that address basic issues of responsibility and remedies available for breach of "primary" or substantive rules of international law, such as with respect to the use of armed force. Because of this generality, the rules can be studied independently of the primary rules of obligation. They establish

- (1) The conditions for an act to qualify as internationally wrongful,
- (2) The circumstances under which actions of officials, private individuals and other entities may be attributed to the state,
- (3) General defences to liability and
- (4) The consequences of liability.

3.5.1 Draft Articles

The final text of the Draft Articles was adopted by the ILC in August 2001, bringing to completion one of the Commission's longest running and most controversial studies. On 12 December 2001, the United Nations General Assembly adopted resolution 56/83, which "commended [the articles] to the attention of Governments without prejudice to the question of their future adoption or other appropriate action."

Crawford notes that the rules are "rigorously general in character," encompassing all types of international obligations.

3.5.2 Conditions for an act to qualify as internationally wrongful,

3.5.3 Internationally wrongful acts

According to the *Draft Articles*, an internationally wrongful act must:

- Be attributable to the state under international law; and
- Constitute a breach of an international obligation of the state.

An internationally wrongful act which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that community as a whole constitutes an international crime. On the basis of the rules of international law in force, an international crime may result, inter alia, from: (a) a serious breach of an international obligation of essential importance for the maintenance of international peace and security, such as that prohibiting aggression;

(b) A serious breach of an international obligation of essential importance for safeguarding the right of self-determination of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination;

(c) a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and apartheid;

(d) A serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas.

4. Any internationally wrongful act which is not an international crime in accordance with paragraph 2 constitutes an international delict.

3.5.4 Attribution

Before a state can be held responsible for any action, it is necessary to prove a causal connection between the injury and an official act or omission attributable to the state alleged to be in breach of its obligations. This has become an increasingly significant contemporary issue, as non-state actors such as Al Qaeda, multinational corporations, and non-governmental organisations play greater international roles, and as governments privatise some traditional functions.

1. The state is responsible for all actions of its officials and organs, even if the organ or official is formally independent and even if the organ or official is acting *ultra vires*.
2. Persons or entities not classified as organs of the State may still be imputable, when they are otherwise empowered to exercise elements of governmental authority, and act in that capacity in the particular instance. Persons or entities not performing public functions may equally be imputable, if they in fact acted under the direction or control of the State.
3. Where there is a breakdown of normal governmental authority and control, such as in so-called "failed states", the actions of those acting as the "government" in a de facto sense will be acts of the state.
4. The acts of an "insurrectional or other movement that becomes the new government of an existing state or succeeds in establishing a new state" can also be attributed to the state. This is also the case where a state acknowledges and adopts the conduct of private persons as its own

Despite their apparent concreteness, the standards stated in some rules involve important ambiguities, and their application will often require significant fact-finding and judgment. Most rules on state responsibility involving private acts already arise under primary rules. For example and Environmental and human rights agreements require states to prevent abuses by private parties.

3.5.5 Consequences of breach

The breach of an international obligation entails two types of legal consequences.

Firstly, it creates new obligations for the breaching state, principally,

- i. duties of cessation and non-repetition (Article 30), and
- ii. A duty to make full reparation (Article 31).

Article 33(1) characterises these secondary obligations as being owed to other states or to the international community as a whole. Articles indirectly acknowledges in a savings clause also that states may owe secondary obligations to non-state actors such as individuals or international organisations.

There is no consensus over the legality of intervention, in part because there is no consensus over the sources of international law more generally. The intervention problem is inseparable from questions that have been at the heart of international law for centuries, and that we cannot expect to be answered in order to reconcile the different views on humanitarian intervention. The legality of humanitarianism is therefore contingent on one's theory of how law works and changes. The law may well be incoherent, and it may be unable to distinguish between compliance and noncompliance, but it remains politically powerful and therefore important. The challenge for scholars is to explain how it is that the commitment to the rule of law coexists with this fundamental ambiguity.

CHAPTER FOUR

4.0 DATA PRESENTATION AND ANALYSIS

4.1 Does state sovereignty exist in the United Nations organization

The concepts "sovereignty", "freedom", and "independence" are among the most important, and at the same time most sensitive concepts of public discourse. Many people have laboured under the delusion that their meaning is simply not to be dependent on others. However, any discussion of these concepts must take into account the changes in progress all around the globe. They cannot be used as if they were creations of peoples' own minds, independent of the reality in which people live. One writer said;

*"having your freedom is worth more than having a high roof over your head" to which he added: "For an independent man, seeking help from others is equivalent to surrendering to the arch-enemy."*⁴⁴

According to one definition under international law, a community of people is sovereign if it controls land, is self-governing and recognised by other states as a sovereign state. The recognition entitles a nation to participate in the community of sovereign states with all the attached rights and obligations. This entails the right to membership of international organisations and participation in bilateral or multilateral treaties with other sovereign nations.

A sovereign state thus has the right to decide its own affairs without interference from other states. It can decide its own constitution, form of government, administrative and other legislation, with the exclusive right to enforce such legislation within its territory. However, the powers of a sovereign state in this respect are limited by the rules of international law, whether such rules originate in treaties or general principles of international law. To give an example, human rights are recognised as principles of

⁴⁴Bjartur í Sumarhúsum [a character in Halldór Laxness' novel, *Independent People*] lived in a world of his own,

international law and are therefore not interpreted on the basis of local conditions or internal legal order. Sovereign nations are bound to observe these rules with respect to their citizens and other nations are permitted to intervene in the human rights affairs of other nations.

Sovereign nations can enter into agreements among themselves without thereby disrupting their status in the community of nations. States can negotiate on the assignment of certain aspects of government, e.g. to international organisations, but this does not mean that the state is no longer sovereign. In such circumstances it is more appropriate to say that a state is sharing part of its sovereignty with other states on a reciprocal basis.

Normally, only sovereign states can become parties to international organisations. The states become participants and consent to abide by the rules of such organisations on certain matters for as long as they remain members. Their participation is based on the rules of international law, and therefore has no impact on their status as sovereign nations.

In the political discourse, however, sovereignty is continually being invoked for the purpose of restricting the scope available to states for participation in international co-operation. It cannot be denied that this is the final recourse of people who have run out of arguments.

The United Nations play an important role for peace and stability in the world. The role of the UN has been expanded gradually in the course of time, and the organisation itself together with its agencies now performs a key role in various areas affecting the daily lives of most people without their being aware of it.

4.2 Did the NATO intervention in Libya violate stated sovereignty

Humanitarian intervention is founded on liberal understandings of a moral obligation to protect human rights. Fernando Tesón, an academic proponent of liberal

interventionism, argues that "if a situation is morally abhorrent, then neither the sanctity of national borders nor a general prohibition against war should by themselves preclude humanitarian intervention". What's more, Tesón states that liberal states have a moral "obligation to rescue victims of tyranny or anarchy"⁴⁵

From this perspective, the international community authorized the use of force in Libya to defend those protesting the Gaddafi regime. This narrative argues that after more than 40 years of oppression, Libyans rose up to call for freedom and democracy. Liberal states, in turn, had a moral imperative to intervene against an unjust, undemocratic regime. In this scenario, international law through the UNSC maintained international peace and security. Through this liberal prism, politics had an irrelevant or secondary role; human rights violations were sufficient to prompt a humanitarian intervention.

Although this narrative was propagated throughout the Libyan conflict, this interpretation ignores NATO's pursuit of a political objective, which, at times, undermined its mandate to protect civilians. NATO used more than 200 cruise missiles and 20,000 bombs in its operation in Libya, including on non-military targets, to support the opposition). Human Rights Watch stated that NATO's actions directly resulted in more than 70 confirmed civilian deaths, including women and children ("NATO" 2012). The New York Times found "significant damage to civilian infrastructure from certain attacks for which a rationale was not evident or risks to civilians were clear"⁴⁶

Furthermore, as the operation wore on, NATO began to strike the homes of Gaddafi loyalists, killing women and children. In one instance, NATO bombed the house of Brigadier General MusbahDiyab, killing not only him but also seven women and children. Evidently, NATO pursued an aggressive, offensive strategy, overstepping its UN mandate.

⁴⁵Tesón 2003, 94.

⁴⁶Pugliese 2012, Chivers 2011.

The military strategy was in line with a political objective of regime change. In fact, after the death of Gaddafi, some within the NATO establishment have ceased denying such a policy existed. In a New York Times Op-Ed, Ivo Daalder, US Ambassador to NATO, stated the operation demonstrated "the use of limited force – precisely applied – can affect real, positive political change". What's more, human rights abuses were documented on both sides. As the rebels gained momentum in the conflict, their actions grew increasingly violent with reports of arbitrary detentions, disappearances, torture and summary executions. In one incident, the bodies of 53 Gaddafi loyalists were found executed with their hands tied.⁴⁷ NATO's aggressive offensive actions, which ignored the opposition's war crimes, are at odds with the liberal interpretation. NATO's actions were demonstrably in pursuit of much more than protecting civilians. As such, a purely moralistic reading of the intervention should be tempered with this reality on the ground.

To explain the war in Libya from a neorealist perspective, one has to consider the development of the Rogue Doctrine in US security policy. Rogue states are revisionist by nature, threatening US national security and seeking to upset the status quo. Gaddafi, for instance, had a notoriously combative relationship with the West. Indeed, one of the first official uses of the *rogue* label was by President Clinton citing the "'danger' posed by 'rogue states such as Iran and Libya'"⁴⁸. Containment and detente are ineffective; the US instead needed to employ the use of force, including pre-emption.

Security policy has two courses of action through this realist doctrine. First, because the US is stronger, confrontation and conflict is favourable. Second, US capabilities, including military force can produce relative gains for the US. Thus, even though conflict is costly – especially military conflict – the US is able to achieve a net gain through the use of force against rogue states. As such, the US intervention in Libya was more so about advancing national security interests in an anarchic system by

⁴⁷"Amnesty" 2011, HRW 2011.

⁴⁸ O'Reilly 2013, 61

eliminating a rogue regime through the use of force. Through the neorealist interpretation, it is human rights that are irrelevant or ancillary to this prime objective. As detailed, NATO's aggressive pursuit of regime change supports this claim

In addition, neo-realists reject the liberal argument that international law can temper anarchy and regulate state behaviour, claiming instead that international law is simply a tool to be used and misused by powerful states. Once again, empirical evidence would appear to support this premise. Foremost, NATO overstepped its authorized mandate. UNSC Resolution 1973 did not authorize offensive action or regime change. South African President Jacob Zuma said he was "not happy" that a no-fly zone "became the bombing cover for the rebels".

Furthermore, NATO violated the arms embargo by actively supplying weapons to the rebels, even though many had links to extremism. NATO also violated the framework of the UN resolution through the use of British, American and Canadian soldiers on the ground.⁴⁹ Thus, for neo-realists, political calculations were central for NATO's decision to intervene.

Marxists would agree with neo-realists that NATO's decision to intervene had more to do with politics than human rights. However, for Marxists, economic interests take precedent. State preferences are not crafted by rational unitary state actors; instead, they are heavily influenced by the upper socioeconomic strata. Gamble states that "what states did abroad very clearly reflected the interests of the dominant sections of their national capital and not just something as vague as national interest".

According to this interpretation, economics and politics are fundamentally intertwined so much so that the state is malleable to ruling-class interests and seeks to create favourable conditions for capital accumulation. Colonel Gaddafi had a well-documented tense relationship with Western commerce. Once Gaddafi was ousted, Western financial interests would be in a prime position to benefit from a liberalized economic system.

⁴⁹ Wang 2011; Fitzpatrick 2011

Indeed, the National Transitional Council said that it intends to reward countries that supported its fight. British Defence Secretary Philip Hammond urged companies to "pack their suitcases" and head to Libya, prompting some to posit that the "starting pistol" for Libya's resources has been fired.⁵⁰ What's more, Hammond stated that while much of Libya lay in ruins, "great care had been taken" to avoid destroying critical infrastructure necessary for commercial operations. These financial interests were not merely reacting to new business opportunities; rather, Libya's "coming bonanza" was an ongoing topic amongst transnational economic networks well before the regime collapsed.

Economist Joseph Stiglitz⁵¹ implicitly concurs with a Marxist interpretation of the use of force to open previously closed markets. He states that the US has adopted "an increasingly hard-powered economic agenda," noting "America's international political economy was driven by a whole variety of special interests which saw the opportunity to force other countries to open their markets to its goods on its terms". As such, through this theoretical framework, the Libyan conflict was a result of capitalist interests seeking to upend the Libyan political system to benefit particular upper-class interests.

Liberals would counter that even though political objectives were evident in Libya, they do not trump humanitarian objectives nor do they negate the need to act to avert a humanitarian crisis. In fact, Taylor Seybolt⁵² argues that humanitarian intervention is inherently political, so much so that its success requires a clear, attainable political objective. Some liberals would also argue offensive action is justifiable.

Tesón⁵³ states that causing harm, including the death of innocents, is justifiable as long as the intervention saves more lives. Yet, in Libya, even this nuanced argument would not justify the conduct of the intervention. Seumas Milne states "it is now absolutely

⁵⁰Adetunji 2011; Krauss 2011.

⁵¹Steger 2008, 233.

⁵² Taylor Seybolt, 2008

⁵³TESON (2003, 117).

clear that, if the purpose of intervention in Libya's civil war was to save lives, it has been a catastrophic failure"

NATO intervened in Libya because of the absence of institutional similarities or likeminded social, political and economic beliefs.

NATO as a collective security arrangement guarantees peace among its members but requires assertive actions against outsiders. From this vantage point, the Libyan intervention was not just about curbing human rights violations; it was also about the promotion of democratic values through regime change. While this argument may have more empirical support, it nonetheless undermines the notion that protecting civilians was the prime motivator for NATO's intervention. This would explain why NATO looked the other way when the opposition committed human rights violations. Ultimately, NATO needed rebel boots on the ground to institute a political change.

NATO, however, has been criticized by developing states, claiming that NATO intervened to pursue its own interests rather than humanitarian objectives. In many ways, the history of the world is the history of war. Two world wars separated by a short interval in the last century were the last straw; setting in motion a trend for states to take up close co-operation among themselves on common interests that they believed would ensure security and balance in the co-existence of nations. Among the organisations to grow from this soil were the United Nations, the Council of Europe, NATO and the European Union.

The development and expansion of international co-operation has progressed steadily. It is becoming increasingly clear to the countries of the world that there is no way for them to solve various problems without co-operation, indeed, without sharing their sovereign powers. The clearest example of this now is no doubt the environment, as it is now obvious to all the countries of the world that pollution has no respect for borders. It is no use for Libya to combat pollution of the sea or overfishing except in co-operation with other nations. It could be argued, with some justification that Libya's

sovereignty, that is to say its sovereignty, rests on the outcome of that struggle. A case in point is the Kyoto Protocol which was extremely important for Libyan interests.

By the same token there is an increased tendency to channel the struggle against international crime into a joint effort where a group of states agrees on systematic measures in the struggle against the criminals. Signs of this tendency can be seen both within the EU and also in the United Nations. We have recently been harshly reminded how important it is for us to work together in this area, and the reaction to the recent acts of terror in the United States shows us in a nutshell how the international community is working together in this area.

In any assessment of sovereignty and its status in light of international co-operation, a question must be asked-whether Libya is actually involved in shaping its own destiny. It can be argued quite convincingly that the member states of the European Union are better placed than Libya as regards sovereignty since they are active participants in the formulation of the rules they are expected to observe. The opinion was widespread that the intervention entailed greater encroachment on sovereignty.

There is a feeling that scholars tend to speak of sovereignty in a too narrow sense, without taking into account everything that has taken place in the world in recent decades, and without regard to the decisions that Libyan leaders have been taking in recent decades, whether on membership of NATO or the EEA.

It appears clear that Libyans are not alone in command of their destiny. National interests in times of globalisation consist in working together in a variety of areas for the purpose of achieving common objectives and to that end sharing sovereign powers that used to be regarded as the inalienable powers of individual states. Thus, the perception that individual nations have of their sovereignty has changed substantially. The prosperity and quality of life of Libyans rest on our ability to engage in diverse relations with other countries from their position as a sovereign state. It is important to assess Libyan interests in the light of changing times and to refrain from creating a

frame around a position which has no relation to the reality or the course of events all around.

On the other hand, the so-called "humanitarian interventions" have been undertaken in the post-Cold War era, most of the interventions, in fact, were not purely humanitarian-oriented, but were greatly driven by states' national interests. Holzgrefe defines humanitarian intervention as: "...the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its citizens, without permission of the state within that territory force is applied." ⁵⁴

4.3 Responsibility to protect

To avoid an interest-driven intervention and to promote one focusing on civilian protection in humanitarian crises, the International Commission on Intervention and State Sovereignty (ICISS), established by the Canadian government, proposed the notion of the responsibility to protect (R2P). R2P is defined as the responsibility of states as well as of the international community to protect civilians from human rights violations. After unanimously adopted at the 2005 World Summit, R2P was said to be the basis of the NATO intervention in Libya in 2011. Still, many developing states suspected that the intervention was undertaken based on national interests of Western states as in the case of Kosovo.

By looking at both realism and liberalism, the paper also explores which international relations theory better explains humanitarian intervention and R2P. It has been argued that while the adoption of R2P represents significant progress of the liberal school, its effects on interventions have been limited. Although, some of the intent behind states' humanitarian responses reflects the protection of human rights; the thrust of responses

⁵⁴ J L. Holzgrefe, "The Humanitarian Intervention Debate," in *Humanitarian Intervention Ethical, Legal, and Political Dilemmas*, ed. J L. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003), p.8.

to humanitarian crises in the post-R2P period remains heavily influenced by realism which emphasizes preservation of national interests.

According to the ICISS's report "Responsibility to Protect," R2P consists of three pillars: (1) states have the primary responsibility to protect their citizens from crimes against humanity, ethnic cleansing, genocide, and war crimes, (2) the international community has the responsibility to assist states in fulfilling their responsibility to protect citizens, and (3) the international community has the responsibility to react to human rights violations if states are unable or unwilling to fulfil their responsibility through political or economic sanctions, and use of force as a last resort.⁵⁵

R2P was established based on the idea of "sovereignty as responsibility." According to several UN officials who developed the idea in the 1990s, sovereignty embraces a dual responsibility: externally to respect sovereignty of other states and internally to respect and protect human rights of citizens within the state. The ICISS report argues, "State sovereignty implies responsibility and the primary responsibility for the protection of its people lies with the state itself."⁵⁶ With the redefined sovereignty, a state would lose the right to sovereignty when it is unable or unwilling to protect citizens, and "the responsibility to protect them should be borne by the international community of states." Thus, the ICISS challenged traditional understanding of sovereignty as right by emphasizing the responsibility of a state as a holder of sovereignty to manage its internal affairs.

The report stipulates six criteria for military intervention including right authority, just cause, right intention, last resort, proportional means, and reasonable prospects. First, military intervention must be authorized by the right authority – the UN Security Council. To make the Security Council a more competent body that can respond to humanitarian crises, the ICISS encourages Council's permanent members to refrain

⁵⁵ Alex J. Bellamy, "The Responsibility to Protect—Five Years On," *Ethics & International Affairs* 24.2 (2010), p.143

⁵⁶ Gareth Evans and Mohamed Sahnoun, "The Responsibility to Protect." *Foreign Affairs* 81.6 (2002), p.102.

from exercising the veto when "quick and decisive action is needed to stop or avert a significant humanitarian crisis." Second, just cause refers to whether there is large scale loss of life or large scale killing with genocidal intention or ethnic cleansing. Third, the intervention should be driven by the right intention – humanitarian interests, not by national interests. Fourth, military intervention is only justified as a last resort after all preventive measures, such as political and economic sanctions are attempted and failed, and a state continuously is failing to protect citizens. Fifth, use of force should be proportional, meaning that it should be "the minimum necessary to secure the humanitarian objective in question." Sixth, military intervention is only regarded as a success if it achieved humanitarian objectives. Thus, the ICISS clarified in detail when and how states can militarily intervene.

The year 2005 Global leaders agreed that states have the primary responsibility to protect their citizens from genocide, ethnic cleansing, crimes against humanity, and war crimes. If states fail to fulfil their responsibility, the responsibility to protect will yield to the international community through various means including use of force. The specific provisions for R2P were stipulated in paragraphs 138 and 139 of the World Summit Outcome Document:

"138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means...The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the

Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”⁵⁷In 2006, the Security Council adopted Resolution 1647 on the Protection of Civilians in Armed Conflict, reaffirming provision of R2P adopted at the World Summit.

It is clear that the foundation of R2P is the liberal view of the world. As liberals emphasize, human rights protection is the core of R2P. Additionally, R2P calls for the international cooperation to protect citizens if states fail to fulfil their responsibility. Moreover, that use of force as a last resort to halt human rights violations can be justified resonates with the argument of contemporary liberal internationalism. Thus, R2P is a norm comprised of core assumptions and beliefs of liberalism.

In contrast, realists would argue that implementation of R2P would continue to be determined based on national interests of great powers. As the third pillar of R2P states, if states fail to protect citizens from human rights violations, the international community will fulfil that responsibility. Realists would then question what the international community refers to in this context. As the ICISS clarified in its report, only the UN Security Council can authorize military intervention. More specifically, the five permanent member states will determine whether the “international community” will intervene based on their national interests. Moses argues that “there can be no guarantee of good behaviour by great powers, precisely because there are no higher powers that can be hold them to account.” Moses further claims that “it is the powerful who decide when interventions should take place and what form they should take...”⁵⁸

⁵⁷ U.N. General Assembly, 60th Session. “Draft Resolution Referred to the High-level Plenary Meeting of the General Assembly by the General Assembly at its Fifty-Ninth Session” (A/60/L.1), 15 September 2005, accessed December 4, 2012.

⁵⁸ Jeremy Moses, “Sovereignty as Irresponsibility? A Realist Critique of the Responsibility to Protect,” *Review of International Studies* (2006), p.18.

Moral sensibility is also less important than national interests for such intervening states. Thus, realists would conclude that states' responses to humanitarian crises would not change even after the adoption of R2P that calls for the international community's moral duty to save civilians in mass atrocities.

On the contrary, one of the assumptions of neoclassical realism is, as Hans J. Morgenthau argues, all human beings inherently seek to increase their power. The power-seeking human nature creates a situation where statesmen struggle for power over other states. Morgenthau argues, "Politics is a struggle for power over men...the modes of acquiring, maintaining, and demonstrating it determine the technique of political action." In international politics, states are always concerned about national interests such as security and wealth. To preserve their interests, intervention could be an option. Morgenthau argues:

*"Intervene we must where our national interest requires it and where our power gives us a chance to succeed. The choice of these occasions will be determined...by a careful calculation of the interests involved and the power available."*⁵⁹

Morgenthau defines success as "the degree to which one is able to maintain, to increase, or to demonstrate one's power over other."⁶⁰

Unlike neoclassical realism emphasizing human nature, neo-realism focuses on an anarchic international system, in which there is no central authority that governs international politics. Kenneth Waltz, a leading scholar of neo-realism, argues that in a self-help international system, the state's foreign policy is determined based on its national interests. States continuously make efforts to preserve their interests and to ensure their survival because in the self-help system, "no one can be relied on to do it

⁵⁹ Robert Jackson and Georg Sørensen, *Introduction to International Relations: Theories & Approaches*, 4th ed (New York: Oxford University Press, 2010), p.66.

⁶⁰ Bettina Dahl. Soendergaard, "The Political Realism of Augustine and Morgenthau: Issues of Man, God, and Just War," *Turkish Journal of International Relations* 7.4 (2008), p.6.

for them.”⁶¹ Tucker argues that states’ interests expand as they gain more power in international politics.⁶² Similar to Morgenthau, Waltz argues that success means preservation and reinforcement of the state’s power. To summarize, classical neo-realism focuses on power-seeking human nature, whereas neo-realism focuses on an anarchic international system. Despite their different focuses, both strands shed light on states’ national interests and their desire to increase power.

In contrast to realists’ focus on state as a major actor, liberalism emphasizes protection of human rights. Classical liberals argue that human beings possess “fundamental natural rights to liberty consisting in the right to do whatever they think fit to preserve themselves, provided they do not violate the equal liberty of others unless their own preservation is threatened.”⁶³ People also have the right “to be treated and a duty to treat others as ethical subjects and not as objects or means only.”⁶⁴

Another core assumption of liberalism is that states can cooperate for a mutual gain. While liberals acknowledge that each individual or state seeks personal gain, they believe that individuals share some interests, which can make both domestic and international cooperation possible. To support this argument, liberals cite emergence of international organizations, such as the United Nations, as an example of prevalence of interstate cooperation.

One of the strands of liberalism discussing the validity of humanitarian intervention is contemporary liberal internationalism. Michael Walzer, a leading scholar of this strand, argues that military intervention can be justified as a last resort and as a means to

⁶¹JonelleLonergan, “Neo-Realism and Humanitarian Action: From Cold War to Our Days,” *Journal of Humanitarian Assistance* (2011).

⁶² S. Telbami, “Kenneth Waltz, Neorealism, and Foreign Policy,” *Foreign Policy, Security Studies* 11.3 (2012), p.161

⁶³ John Charvet and Elisa Kaczynska-Nay, *The Liberal Project and Human Rights: Theory and Practice of a New World Order* (London: Cambridge University Press, 2008), p.3.

⁶⁴Michael Doyle and Stefano Recchia, “Liberalism in International Relations,” *International Encyclopedia of Political Science* (2011), p.1434.

protect civilians from human rights violations, such as genocide and crimes against humanity. However, such intervention should not be undertaken unilaterally, but rather multilaterally with the authorization of the UN Security Council because liberal internationalists believe that multilateralism prevents great powers from pursuing national interests rather than humanitarian objectives in intervention.

Just as in Kosovo's case, NATO claimed that the intervention saved Libyan civilians from Gaddafi's aggression. NATO also successfully collapsed the Gaddafi regime, though the purpose of the intervention was not regime change. The majority of the bombing targets were also military-related facilities that would threaten Libyan people. However, NATO again failed to improve the humanitarian situation, and Libya remains highly unstable today. The Interim National Transitional Council (INTC), established by the Libyan opposition group and supported by NATO, has been incapable of functioning as the central authority. Occasional clashes between militias are another reason for instability. Particularly, the opposition-sponsored militia "have unlawfully detained thousands of regime supporters, executed others, driven misused communities from their homes and engaged in widespread torture." Furthermore, according to the International Crisis Group, roughly 12,500 Libyans remained armed, and the small arms proliferated throughout the country. Thus, considering Libya's chaotic situation, it is questionable whether the NATO intervention can be viewed as a "humanitarian" intervention.

Why did NATO Intervene in Libya?

NATO member states expressed humanitarian concerns about the imminent threat in Libya. President Obama stated, "We cannot stand idly when a tyrant tells his people there will be no mercy." French President Sarkozy also claimed, "In Libya, the civilian population, which is demanding nothing more than the right to choose their own destiny, is in mortal danger...it is our duty to respond to their anguished appeal."⁶⁵ In

⁶⁵ Libya: US, UK and France Attack Gaddafi Forces," *BBC News Africa*, March 30, 2011
<<http://www.bbc.co.uk/news/world-africa-12796972>>

addition, the UN Security Council concluded that attacks of pro-Gaddafi forces "may amount to crimes against humanity."⁶⁶ Thus, Gaddafi's explicit aggression against protesters and the sense of moral duty to save them, to some extent, urged NATO to intervene.

However, NATO intervening states had concrete national interests to preserve in Libya. First, restoration of access to Libya's oil reserve was vital for European states. Libya has exported roughly 85 percent of oil to several European states, such as Italy, France, and the UK. Libyan oil accounted for more than 28 percent of Italian oil imports, percent of French oil imports, and 8 percent of UK's oil imports. During the civil war, oil production significantly dropped, amounting to less than 20 percent of Libya's domestic needs. This decline likely caused great damage to the economies of those oil importing European states. Therefore, ending the civil war to restore Libya's oil production was the primary purpose of their intervention. Consequently, those European states played leading roles in the intervention by providing air forces, training the Libyan rebels, and providing them weapons.⁶⁷

Second, Western states feared that Libya could return to a terrorist-sponsored state if Gaddafi won the civil war. Since Gaddafi established terrorist training camps in Libya in the early 1970s, the Libyan government provided a large amount of weapons, money, and safe heaven to various terrorist groups. The US then added Libya to the list of states sponsoring terrorism and implemented trade restrictions against Libya. In 1999, Gaddafi started cutting his ties with terrorist groups, and his efforts eventually made the US decide to remove Libya from the list in 2006. Hence, it can be assumed that Gaddafi did not sponsor any terrorist groups at the time of the civil war. Yet, Western states were afraid of Gaddafi's potential return to a sponsor of terrorism, which would greatly threaten the security of Europe because of Libya's proximity.

⁶⁶ Jonas Claes, "Libya and the Responsibility to Protect," *United States Institute of Peace* (2011).

⁶⁷ David Anderson, "The Fight for Libya's Oil," *Politics in Spies*, September 15, 2011
<<http://politicsinspires.org/2011/09/the-fight-for-libyas-oil/>

Third, Western states feared Libya's possession and potential use of chemical weapons against them. In the mid-1970s, Gaddafi pursued nuclear weapons. Libya's use of chemical weapons against Chad was also severely criticized in the late 1980s. In 2003, the Libyan government announced that it would abandon its weapons of mass destruction (WMD) including nuclear, chemical, and biological weapons. However, Libya still failed to completely give up their chemical weapons. Because Gaddafi was not generally considered a rational actor, his possession of weapons was a threat to Western states. Thus, the interests of NATO member states including economic and security concerns were greater driving forces behind the intervention than humanitarian concerns. Similar to Kosovo's case, realism seems to better explain states' motivations in Libya.

The NATO intervention in Libya was legal because the Security Council in Resolution 1973 "provided the coalition with the legitimate authority to intervene." This change is worth noting because it suggests that NATO recognized the Security Council as the legitimate authority that can authorize intervention, which is stipulated in ICISS's report.

Another significant change was that, unlike other conflicts, it took only a month for the Security Council to authorize the use of force in Libya's case since the conflict began. This suggests that the international community has become more responsive to humanitarian crises and has realized its moral duty to protect civilians. In this sense, R2P has had some impact on states' behavior in the face of mass atrocities.

However, though, the impact of R2P was very limited; First, pursuance of national interests seemed to be greater factors that motivated states to intervene than humanitarian concerns. NATO intervened in Libya because it was afraid of Gaddafi's potential to sponsor terrorists again and to use chemical weapons against Western states. To remove such threats, regime change then became the main objective of their intervention. This argument is well-supported by the fact that NATO left Libya "soon after the killing of Gaddafi despite the continuation of sporadic violence in some

parts of the country.” This was a clear abuse of the mandate because the Security Council authorized the use of force was to protect civilians, but not to change existing regime and to support the rebels.⁶⁸ This blatant mandate abuse implies that realism still dominated the motivations of intervention regardless of adoption of R2P.

Second, the intervention was not fully supported by the international community. Many developing states also criticized the great powers’ justification of the intervention. Regarding Libya’s case, Security Council’s authorization of the use of force does not mean that the intervention was fully supported. In fact, Brazil, China, Germany, India, and Russia abstained from voting by expressing their opposition of use of force. Brazil stated, “We are not convinced that the use of force...will lead to the realization of our common objectives – the immediate end to violence and the protection of civilians.” China argued, “China is always against the use of force in international relations...China has serious difficulty with parts of the resolution.” Germany also claimed, “We have very carefully considered the option of using military force – its implications as well as its limitations. We see great risks. The likelihood of large-scale loss of life should not be underestimated.”⁶⁹ The reason why those states, especially Russia and China, abstained was that as Russia stated, they did not want to prevent the adoption of the resolution. Although this might be viewed as an influence of R2P, appealing for states’ morality to defend human rights, their fundamental opposition of use of force remains unchanged.

Third, as examined in the case study, the intervention clearly failed to alleviate humanitarian situations in Libya; rather, the intervention created unintended humanitarian crises and made people suffer more. Fourth, although the first pillar of R2P calling for states’ responsibility to protect was mentioned in Resolution 1973, no NATO member states and the Security Council invoked the third pillar of R2P, which calls for the international community’s responsibility to protect. Thus, R2P was not used

⁶⁸Kuwali, Dan. “Responsibility to Protect: Why Libya and not Syria?” *The African Center for the Constructive Resolution of Dispute (ACCORD)*, 2012.

⁶⁹ UN Security Council (Provisional Verbatim Record), 6498th Meeting, 17, March 2011 (S/PV. 6498),

to mobilize the international coalition to protect civilians. This implies that R2P has not developed enough to influence states' decision-making.

4.4 The challenges to humanitarian intervention

Although many see threats to state sovereignty from a wide variety of sources, many of these can be grouped in three broad areas: the rise of human rights, economic globalization, and the growth of supranational institutions, the latter being partially driven by economic integration and the cause of human rights.

The emergence of human rights as a subject of concern in international law effects sovereignty because these agreed upon principles place clear limits on the authority of governments to act within their borders. The growth of multinational corporations and the free flow of capital have placed constraints on states' ability to direct economic development and fashion social and economic policy. Finally, both to facilitate and to limit the more troubling effects of these developments, along with a range of other purposes, supranational organizations have emerged as a significant source of authority that, at least to some degree, place limits on state sovereignty. It is too early to tell for certain, but recent US action in Afghanistan and Iraq suggest that sovereignty will be further constrained in the fight against transnational terrorism.

The Protection of Human Rights

The United Nations Charter contains a contradiction that has become ever more troublesome, particularly after the end of the Cold War. On the one hand, the Charter contains clear defence of the territorial integrity of states, a reaction to Nazi aggression during World War II. At the same time, it also contains commitments to individual human rights and the rights of groups to self-determination. Conventions on genocide, torture, and the like restricted state behavior within its own borders. Regional organizations were articulating human rights principles as well. The growth of human rights law limits sovereignty by providing individuals rights vis-B-vis the state. However,

in the context of the Cold War, US-Soviet rivalry paralyzed the Security Council and it rarely acted in defence of these principles.

At the same time, non-governmental organizations (NGOs) emerged in the 1960s-70s fighting for the cause of human rights. Groups such as Amnesty International and Human Rights Watch serve as watchdogs to publicize the human rights record of governments limiting state action in some ways. The publicity is sometimes enough to alter state behaviour. At other times, the information serves to prompt other states to apply diplomatic pressure, economic sanctions, and increasingly common to contemplate humanitarian intervention.

In the 1990s, the Security Council began to reinterpret the Charter to more frequently favour human rights over the protection of state sovereignty. Through a series of resolutions, the United Nations has justified intervention in the internal affairs of states without their acquiescence. In cases such as Somalia, Bosnia, and Kosovo, the Security Council has gradually expanded the definition of international threats to peace and security to justify intervention in circumstances that would have been inconceivable in the past. At the same time, as these cases and Rwanda show, states are often only willing to risk their troops when there is some national interest at stake. There is also great reluctance to interpret any of these instances as precedent-setting as states fear they may be the target of intervention in the future.

Economic Globalization

For many, economic globalization places significant limits on the behaviour of nation-states at present. For those who see the retreat of the nation-state, the growing power of unaccountable market forces and international organizations provokes calls for change. As will be further elaborated below, the growth of multilateral institutions to manage the global economy constrains state action. The increasing mobility of capital has led states to pursue increasingly similar policies along the neo-liberal model. Given the intensification of global competition, government spending and revenue-generation

are increasingly constrained. While some do not go so far as to declare the end of the welfare state, many see a worldwide convergence toward a more limited welfare state. Others find that, while the tasks of the state may be changing, the state very much remains the key driver of globalization processes. That is not to say that all states have equal influence in the process. Nor can the outcomes be reduced to strictly positive or negative because the multitude of processes involved impact different states in different ways.

Supranational Organizations

Given the emergence of a whole range of trans-border issues from economic globalization to the environment to terrorism, one of the key discussions surrounds whether the nation-state is obsolete as the best form of political organization to deal with these problems. Economic and social processes increasingly fail to conform to nation-state borders, making it increasingly difficult for states to control their territory, a central component of sovereignty. This raises important questions about the proper site of political authority. As governance structures are established at the global level to deal with the growing number of global problems, debate has ensued as to how to make these arrangements accountable and democratic.

Many organizations are state-based, such as the United Nations, the World Trade Organization, or the European Union. Therefore, in principle, states are firmly in control and any ceding of sovereign authority is in their interest to do so. However, bureaucracies, once established, often seek to carve out additional authority for themselves. States also may find functional benefit in ceding authority to supranational organizations.

What is more, a whole range of private organizations have emerged to infringe on sovereign authority as well. In addition to human rights NGOs discussed above, global civil society organizations have emerged around numerous issues. Civil society groups have had a growing, yet uneven, effect on nation-states and international

organizations. In addition, as economic interdependence grows, private governance arrangements, such as the Bank for International Settlements, are also becoming more prevalent. Private security organizations even conduct war on behalf of states, whether as mercenaries in western African civil wars or as contractors to the US military around the world.

Together all of this suggests that the concept of sovereignty is under considerable pressure. Some aspects of sovereignty still exist and are honoured in most circumstances, but many inroads are being made into state authority by many actors in many different circumstances. Where this will lead has yet to be determined.

CHAPTER FIVE

5.0 FINDINGS, CONCLUSION AND RECOMMENDATION

5.1 Findings

Humanitarian intervention is intervention forced upon a sovereign state. It is either arbitrarily undertaken by one state or collectively by a group of states (at times under the platform of an international organization like the United Nations) with the express purpose of protecting civilians from human rights abuses, war crimes, crimes against humanity, and genocide, among other humanitarian imperatives.

Before the emergence of the United Nations, any nation could arbitrarily embark on "intervention" into another state (though most interventions were justified in terms of the intervening state's obligation through a formal alliance or national security, rather than humanitarian reasons). But since the foundation of the UN Charter in 1945, humanitarian intervention has become the exclusive and statutory prerogative of the "international community," primarily through the authority of the United Nations Security Council (UNSC). However, this is if and only if the precipitating circumstances pass the "shock-the-conscience" test; that is, if the circumstances involve the existence of an immediate and extensive violation of humanitarian principles, in the form of mass atrocities.

Thus, humanitarian intervention is undertaken to prevent horrendous crimes, such as widespread slaughter, and other serious violence that puts citizens of a given state at risk. Such forcible intervention, authorized by the UNSC under Chapter VII of the UN Charter and undertaken by the UN or even a regional organization, trumps the sovereignty of the state that has either committed or failed to prevent atrocities against its citizens.

Although humanitarian intervention is the statutory preserve of the United Nations or any other regional organization acting at the behest or under authorization of the

UNSC, there are limits to be strictly observed. Furthermore, some accountability should be rendered during and after the intervention. This includes: the obligation to use proportionate force that does not destroy more human lives than the intervention was undertaken to protect; prompt discontinuation of the intervention once atrocities are halted and relevant structures are put into place to ensure they do not recur; and the obligation to render accounts to the authorizing body (the Security Council) with respect to the actions taken.

In addition, interventions should, where possible, attempt to stop the government from committing atrocities but should simultaneously minimize destabilizing effects on the country's fundamental political structures. This is in accordance with Article 2, paragraph 7 of the UN Charter, which prohibits intervention in the domestic affairs of sovereign states. Despite this limitation on humanitarian intervention, the UN became involved in electoral disputes in the Ivory Coast and was part of regime change in Libya under the auspices of humanitarian intervention. Unfortunately, by overstepping the bounds of a humanitarian operation and engaging in politics that look more like regime change, the UN has undermined its credibility for conducting authentic humanitarian interventions in the future. The point must be made here that the only exception to Article 2, paragraph 7 of the UN Charter is in an enforcement action under Chapter VII of the Charter. But here, the exception must be with an express mandate or authorization of the Security Council. Unfortunately, in Sierra Leone and Libya, this UN Security Council mandate was never given, which is why the UN can be said to have overstepped its bounds in those countries.

The willingness to use armed force is also inevitably influenced not only by the desperation of the affected population but also by geopolitical factors, including the relevance of the country to the world community, regional stability, and the attitudes of other major players, say experts.

The U.S. role as standard bearer for the R2P concept remains a question. It has been reluctant to commit to a forceful intervention in Syria, limiting itself to announced plans

to arm the opposition and working with Russia to try to convene a peace conference bringing together the Assad regime and rebels. CFR's Waxman says the U.S. nation-building experiences in Iraq and Afghanistan have demonstrated the on-the-ground challenges faced after U.S.-led interventions. "The United States has limited power to help put these countries back together after regimes collapse in ways that ensure that rights and safety of the local populations are maintained," he says.

At present, the world community has limited options for responding to humanitarian crises. UN General Assembly Resolution 46/182 formed guiding principles for states' response to humanitarian disasters and was central to the establishment of the office of the UN emergency relief coordinator and the development of the Inter-Agency Standing Committee.

But the General Assembly resolution reiterates that "the sovereignty, territorial integrity, and national unity of States must be fully respected in accordance with the Charter of the United Nations," which makes it difficult to operate in situations where the affected country denies access. In such cases, the role of regional actors and neighbours becomes critical.

5.2 Conclusion

The International Commission on Intervention and State Sovereignty stated that a state's freedom from external interference is conditional upon its fulfilment of its sovereign obligation to protect its citizens. This concept, termed the Responsibility to Protect (R2P), was not without its detractors.

Examination of the features of the two intervention cases shows that states' responses to humanitarian crises have not dramatically changed before and after R2P was adopted. Although the adoption of R2P represents significant progress of the liberal school, the realist critique of R2P should be seriously considered to avoid intervention based on national interests of great powers. Considering the fact that the intervention

in Libya was undertaken to preserve national interests of some of NATO member states, the selectivity of intervention is likely to occur in the future, meaning that states would not intervene in humanitarian crises if their national interests are not at stake. In other words, realism continues to enjoy greater explanatory power for humanitarian intervention than liberalism.

Also, the intervention in Libya resulted in making it difficult for the Security Council to authorize future intervention because the mandate stipulated in Resolution 1973 was stretched to serve one of the Western states' interests, which was regime change. The abuse of the mandate made developing states suspicious about motivations of intervening states. This will inevitably prevent R2P from developing as a more solid and influential norm, and states' reference to R2P in future humanitarian crises will be contested.

Increasingly the intervention in Libya is becoming regarded as unique, and there appears to be less of an appetite for destroying the baseline order in states, regardless of how odious a state may be, "Libya has exposed fissures within the international community and brought to the fore conflict not only in the Security Council permanent members but also among many developing countries that have long been lukewarm about the concept" of R2P.

5.3 Recommendations

At the global level, a number of steps could be taken to surmount the challenges to humanitarian intervention. One of the most important would be for the Security Council's permanent members to transcend their narrow national interests and, in fact, do away with the obsession with state sovereignty. Unfortunately, there is a very slim chance of this happening, particularly because UN Security Council permanent members like China and Russia have continued to exhibit obdurate behaviour in addressing conflict zones like Syria and the Iranian nuclear program crisis. Any nation that fails in its obligation to uphold international law, particularly the protection of human lives,

loses its right to sovereignty, political independence, and territorial inviolability. Thus, state sovereignty should be discarded in favour of human rights and humanitarian principles.

To that end, the Security Council should make the threshold for humanitarian intervention more explicit. State sovereignty should no longer be a barrier to humanitarian intervention because any claim to sovereignty that is not consistent with the protection of fundamental humanitarian principles should be null and void. As such, the Security Council should mandate an unambiguous enforcement action under Chapter VII of the United Nations Charter. As laid out in Article 45 and Article 43, this would require the Security Council to make a special agreement on such issues as "armed forces, assistance, and facilities, including rights of passage." The members of the Security Council should therefore seek to design an agreement that lays out the elements of this enforcement action with an explicit threshold for humanitarian intervention, and limits to prevent this humanitarian intervention from becoming regime change.

The researcher buys the view by some rights activists and journalists who focus on humanitarian affairs have said regime change should sometimes be part of the process of protecting populations. David Rieff, a journalist who specializes in humanitarian issues, wrote in the *New York Times Magazine* in June 2008: "Use any euphemism you wish, but in the end these interventions have to be about regime change if they are to have any chance of accomplishing their stated goal." In the wake of the 2011 crisis in Libya, following calls for regime change, Thakur also argued: "R2P is not solely about military intervention but, if it is to have any meaning at all, must include that option as a last resort."

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