NEAR EAST UNIVERSITY

GRADUATE SCHOOL OF SOCIAL SCIENCES

DEPARTMENT OF INTERNATIONAL RELATIONS AND POLITICAL SCIENCE

MASTER'S THESIS

HUMANITARIAN INTERVENTION: NECESSITY OR MENACE?

UME RUBAB SHEIKH

20141997

SUPERVISOR

ALI DAYIOĞLU

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Prepared By: Ume Rubab SHEIKH

We certify that the Thesis is satisfactory for the award of the Degree of Master of Science of Political Science and International Relations

Examining Committee in Charge

Assist. Prof. Dr. Nur KÖPRÜLÜ	**Chairman of Committee**
	Department of International Relations
	Near East University
Assist. Prof. Dr. Turan CAVLAN	**Department of International Relations**
	Cyprus International University
Assist. Prof. Dr. Ali DAYIOĞLU	**Supervisor**
	Department of International Relations
	Near East University

Approval of the Graduate School of Social Science

Prof. Dr. Çelik ARUOBA – Prof. Dr. Muhittin Tolga ÖZSAĞLAM

ÖZET

İnsani Müdahale: Gereklilik mi, Tehdit mi?

Hazırlayan: **Ume Rubab SHEIKH**

Ocak 2016

Tez, uluslararası toplum tarafından uygulanan insani müdahalelerin meşruluklarını kıyaslama ve değerlendirmenin yanı sıra zorlayıcı faaliyetler ile ilgili olan etkin müdahale sorununu gözler önüne sermeyi amaçlamaktadır. Bu amaç doğrultusunda üç temel araştırma sorusuna cevap aranmıştır; İnsani müdahale meşru mudur? Eğer meşru ise, insani müdahale, müdahil devletler tarafından istismar edilebilir mi? Son olarak, tarafsız, istismar edilemeyecek, sadece insani amaçlar güden bir müdahale için olası çözümler nelerdir?

Bu çalışmada nitel metodolojiden faydalanılmış, aslen insani müdahalenin meşruiyet sorunu üzerine odaklanmış olan mevcut literatür incelenmiş ve olası çözümler ortaya konulmuştur. Öncelikli olarak bu çalışmada, Soğuk Savaş döneminin bitimi ile birlikte bu pratiklerin meşruiyetlerinin nasıl inşa edildiği açıklanmış, ilerleyen bölümlerde ise mevcut kuruluş sorunu ile karşılaştırma yapılmıştır.

Bu araştırmanın sonunda çarpıcı sonuçlar elde edilmiştir. Elde edilen sonuçlar ışığında insani müdahalenin meşru olduğunu savunmak mümkündür. Fakat, insani müdahalenin taraflı ve müdahil devletlerin çıkarlarına hizmet ettiğini de vurgulamak elzemdir. Dolayısıyla, hem hukuki meselelerle hem de uluslararası politikayla ile ilintili bir çalışma ortaya konulmuştur.

Anahtar Kelimeler: Devletin Egemenliği, Müdahale Etmeme İlkesi, İnsani Müdahale, İnsani Güvenlik, Müdahale Teorileri, Koruma Sorumluluğu, Birleşmiş Milletler Güvenlik Konseyi.

ABSTRACT

Humanitarian Intervention: Necessity or Menace

Prepared by: **Ume Rubab SHEIKH**

January, 2016

This thesis lays a parallel between the legitimacy of humanitarian interventions, as established practice in the international society, and the leads to showing the problem of effective action regarding these coercive actions. The primary focus of this thesis is to answer three research questions; is humanitarian intervention legitimate? If so, is it exploited by the intervening states? What are the solutions for an unbiased intervention focusing solely on humanitarian purpose? This study will use the qualitative methodology by examining the literature on the problem of legitimacy of humanitarian intervention and will extract solutions based on it. Initially, there will be an attempt to show the construction of the legitimacy of these practices after the end of the Cold War, and then compare it to the problem of its establishment effectively. The findings of this work are of utmost importance as they show that intervention is indeed legitimate, however, it has been biased and is more beneficial to the intervening states for their gains. Therefore, this thesis is a correlation between questions of law and international politics.

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TABLE OF CONTENTS

ABBREVIATIONS

AFRICOM:	United States Africa Command
AU:	African Union
CSCE:	Commission on Security and Cooperation in Europe
IAEA:	International Atomic Energy Agency
ICC:	International Criminal Court
ICISS:	International Commission on Intervention and State Sovereignty
ICJ:	International Court of Justice
LON:	League of Nations
NATO:	North Atlantic Treaty Organization
NGO:	Non-Governmental Organization
NTC:	National Transitional Council
OSCE:	Organization for Security and Cooperation in Europe
R2P:	Responsibility to Protect
SNF:	Somali National Front
SSDF:	Somali Salvation Democratic Front
UN:	United Nations
UNAMIR:	United Nations Assistance Mission for Rwanda
UNITAF:	Unified Task Force
UNMOVIC:	United Nations Monitoring, Verification and Inspection Commission
UNOSOM:	United Nations Operation in Somalia
UNSC:	United Nations Security Council
UNSMIL:	United Nations Support Mission in Libya
US:	United States of America
USC:	United Somali Congress

INTRODUCTION: INITIAL CONSIDERATIONS ABOUT HUMANITARIAN INTERVENTION

There are many debates about the efforts done by states to conform to international human rights standards, or the dispute surrounding the issue of humanitarian intervention. This particular issue gained momentum due to the changes in international system that took place after the Cold War. The changes were to such an extent that increased the demands placed on the United Nations (UN) regarding the maintenance of order through the expansion of democratic regimes and issues related to the limits of a seated international order on the principle of sovereignty gained centrality. In fact, the causal link between democracy and security, which then settled, has led to a normalizing political agenda; an agenda that assumes that international security is not a result of the balance of power, but the spread of democratic regimes in principle averse to war. At the end of the 1990s, democracy had already taken as a condition authorizing the predicament of sovereignty. The new vocabulary put into circulation from a peace agenda does not represent a previously constituted reality (Alexander, 1999, 403). Rather, it is with these new vocabularies that have established new relations of power-driven transformation of national societies from a liberal democratic model. It is, however, asked, as in a system guided by the principle of sovereignty, and its corollary of non-intervention, such concepts could emerge? This vocabulary was able to report a set of practices in the fields of international security, particularly Peacekeeping Operations. International law is a set of mandatory rules that regulate the search behavior of international actors giving those rights and duties. It is created by the consent of the states - the main actors of the international system - which are sovereign entities and are not bound to any higher law without your consent. They may, in legal terms, do what suits them, unless they have consented to a specific rule that restricts their behavior (Chesterman, 2002, 293-307). However, if the state has sovereignty, why decide to submit to the rules of international law? And once bound and placed in an international system that does not have a supranational agent responsible for monitoring and applying sanctions, why obey this law? The answer lies in the concept of legitimacy. This can be defined as "an institution that influences the observance of those to whom it is addressed, as they believe that the law or the institution is operating in accordance with generally accepted principles of law" (Chesterman, 2002, 239-307). Two elements are important in determining the legitimacy of a rule: authority and control. For a rule it has authority to be understood by states as law, as opinion juries. It should also control the behavior. Interventions represent "the weakest forms of 'legitimacy'

violations of the norm of non-intervention, accepted by consensus at various universal legal instruments" (Chesterman, 2001, 295). This thesis aims to state that academicians ought to quit concentrating on whether the act of helpful intervention ought to be permitted or not and rather recognize its presence and shift the level headed discussion towards assessing the normal standard of conduct that must be held fast to amid an intervention on humanitarian grounds. As contended by Portela (2000, 22) "given that intervention exists, the law must adapt to present circumstances and advance a structure to oblige and manage the doctrine". Portela (2000, 18) goes ahead to guarantee that "this is not troublesome in International Law, particularly since one of the extraordinary attributes of International Law is that infringement of law may prompt the development of another law, so that a global custom could be deliberately made".

This thesis aims to answer three research questions: (i) Is humanitarian intervention legitimate? (ii) Is the practice of humanitarian intervention more harmful than beneficial? Is intervention exploited by intervening states' agendas and if so, are there any solutions for the doctrine of humanitarian intervention to be practiced without any bias? Therefore, the aim is to identify some of the standardization practices that have emerged with the Cold War with the working hypothesis proposal which states that (i) the transformations undergone reflects a redefinition of what it means peace and the means by which it should be achieved, especially with regard to the transformation of domestic political regimes; and (ii) such transformations mark the convergence between development and security practices within the practices. In this sense, it is intended to gather evidence enabling discussion over how it handles the connection between collective security and development assistance through the analysis of the case studies of interventions that have been carried out. Such a cut allows identifying some of the main guidelines of the institutional changes that allowed the creation and deployment of calls multidimensional carriers mandates that include aspects related to security and development practices.

. It is pertinent here to mention the importance of intervention in Iraq starting in 2003 by Resolution 688 as it marked as the first legitimate intervention ordered by the UN. Therefore, the analysis will be based on the UN Charter and the resolutions of the UN Security Council focusing on the study of the legality of preventive intervention from the perspective of the UN system. It started from the perspective that the role and the demonstration of force in the international community depend on non-legal and political

factors, as well as the current state of law. But this should seek to provide mechanisms to prohibit and punish the use of violence. So an analysis was undertaken to ascertain the relationship between international law and the use of force in order to assess the legality of preventive intervention in relation to the legal framework used.

The scope, validity and procedure of intervention has been of utmost interest to most academicians and policy-makers and considering today's troubled times where Afghanistan, Libya, Iraq are still reeling from the aftermath of interventions and Sudan and Syria are on the brink of mass human massacre, it is essential to tackle and find solutions. Therefore this thesis will first present the historical significance and evolution of intervention and will proceed to tackle the questions of legitimacy, sovereignty as well as non-intervention principle. As this thesis is based on qualitative method, therefore extensive literature will be analyzed and examined to reach solutions for this procedure. Case studies will be examined to determine the pros and cons of interventions and aftermath will be discussed. Finally, solutions will be proposed based on the findings of extensive analysis.

CHAPTER ONE: OVERVIEW OF HUMANITARIAN INTERVENTIONS

1.1. Definition of Humanitarian Intervention

The concept of humanitarian intervention will be discussed again and again throughout this work. Therefore, different definitions for the said concept will be presented and common points will be observed. Humanitarian intervention shall be defined as "the threat or use of force across state borders by a state (or groups of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied" (Holzgrefe, 2003:18). However, Parekh (1998, 147) believes that "an act of intervention in the domestic affairs of another country with a view of ending a violation due to disintegrations or gross misuse of authority of the state, and helping create conditions in which a viable structure of çivil authority can emerge". In a similar vein, Knudsen (1997, 148) believes that "intervention is a dictorial or coercive interference in the sphere of jurisdiction of a sovereign state motivated or legitimated by humanitarian concerns".

There are a plethora of definitions for humanitarian intervention but for the purposes of this study, the three presented above are sufficient to establish some common grounds about intervention. In my opinion, humanitarian intervention synthetically is the international intervention done due to the legitimate need to protect human rights of individuals being violated massively and for a long time. All the definitions give call on the use of military force in order to preserve human rights and they also show the lack of permission by the state which is about to be intervened. This particular point shows that in most cases, the states are themselves perpetrating the crimes e.g. Bashar al Assad[1] in Syria, or are unable to protect their citizens e.g. Somalia. Also more emphasis is placed on the security of humans and for restoring peace in the stricken region and most importantly, calling onto UN to spear-head intervention procedures. The discussion on the legality of humanitarian intervention dates back to NATO intervention in the territory of Kosovo, which serves as a milestone in the international framework, for even without the formal approval of the United Nation Security Council, the intervention was performed. It is important to distinguish between two kinds of

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[1] Bashar Hafez al-Assad is the President of Syria, commander-in-chief of the Syrian Armed Forces, General Secretary of the ruling Ba'ath Party and Regional Secretary of the party's branch in Syria.

humanitarian intervention which are under the contemporary framework of international law, namely, unilateral humanitarian intervention, or foreign, and international or collective humanitarian intervention. Unilateral interventions are characterized by interventions being practiced by country or foreign countries in the areas of the territory where direct human violations are happening. This type of intervention is one that just does not have the approval of the UN Security Council, even if it has the approval of international society. In contrast, collective interventions are those that besides counting on the approval of the international community are legitimized by the United Nation Security Council to act.

In this work, unilateral intervention are not condemned, since they are instruments of safeguard human rights, such as those previously mentioned, which occurred during the Cold War. Much of the doctrine today defends the idea of humanitarian intervention as a guarantee instrument for human rights, and therefore, a legitimate instrument of protection of human rights.

1.2 Theories of International Relations and Humanitarian Intervention

It is essential to understand the concept of Humanitarian Intervention under the light of International Relations theories as it will help us ascertain the behavior of the intervening states and their particular gains out of it. Robert Cox states that "intervention is dependably for somebody and some reason" (1996, 87). Advocates of the English School trust that the state is sovereign inside of a bigger society of states, "which incorporates normally concurred values, rules and establishments" (Bellamy, 2003, 323). Then again, constructivist approach of global relations contends that the state framework is both developed by and developing of individual state personality (Reus-Smit, 2001, 519). This shows the sorts of issues and performing artists that they benefit as essential, hence affecting the position they take on issues inside of the level headed discussion. For instance, the state center of pluralist point of view restricts that humanitarian intervention is impermissible in light of the fact that it hinders on the power of states inside of the global society (Bellamy, 2003, 323). Solidarist scholars' support an universal society that implements global law in compelling instances of infringement of concurred moral measures (Bull, 1995). Fundamentally, regardless of divisions in the middle of solidarists and pluralists inside of the methodology, their likeness gets from their accentuation of the state idea (Bellamy, 2003, 323; Dunne, 2001; Hanson and Slope, 2001). This hypothetical "logocentrism" compels English School discourse between,

"parallel resistances, for example, human rights or power; intervention or non-intervention" (Bellamy, 2003, 328). Thusly, the hypothetical establishment of the English School verifiably obliges their way to deal with the humanitarian intervention. This is vital in light of the fact that it affects the meaning of humanitarian intervention and how they head a level headed discussion.

With a specific end goal to comprehend the idea of humanitarian intervention it is imperative to dissect the idea of intervention freely. The term humanitarian is characterized reliably in the writing with reference to originations of human rights and ethical quality (Ayoob, 2002, 81; Baer, 2011, 301; Bellamy, 2003, 323; Gomes, 2010, 4; Roberts 2000, 51). This incites banter between researchers who trust that ethical quality legitimizes intervention in the quest for avoiding human rights infringement, and the individuals who shield the political ethical quality of power - with the sovereign state as a preeminent good power (Devetak, 2007, 151). A great part of the discussion concerning profound quality stems from the works of Kant and Rousseau, who, as per Gomes, reason that, "it is uncalled for to stand still by while huge human rights infringement happen when it is plainly conceivable to stop the barbarity through mediation" (2010, 22). It is critical to comprehend those distinctive understandings of ethical reasoning of interventions.

The significance of human rights to the idea is all around exhibited in Janse's examination that, "the rundown of human rights that would be acknowledged among liberal people groups is a great deal more broad than the rundown acknowledged by both liberal and nice non-liberal people groups" (2006, 679). A relevant constructivist commitment highlights that, "Even on the off chance that human rights are thought to be natural, an ethical characteristic of persons that the state can't negate, rights still must recognized – that is, built – by human creatures and arranged in lawful frameworks" (Forsythe, 2000, 3). In this way, the capacity to characterize the humanitarian idea verifiably gets from specific hypothetical points of view on the comprehensiveness of human rights. It is additionally conceivable that this affects the level of investigation with which scholars center their decisions. A universalist-solidarist scholar will be more disposed to view humanitarian intervention at the supra-national level than a pluralist scholar who concentrates on the state level. In investigating humanitarian intervention, researchers must know about the hypothesis that underlies the meaning of key terms and also the hypothesis which underpins their decisions. This has been shown by an investigation of the hypothesis that supports the helpful idea. The

relationship between the ideas of humanitarian and intervention is essential in an examination of the civil argument. The excellent definition, shared by most English School journalists, characterizes intervention as, "Action taken up by a state, a gathering inside of a state, a gathering of states, or a worldwide association which meddles coercively in the residential issues of another state. It is a discrete occasion (Vincent, 1974, 3). Welsh School approach recommends that contention counteractive action what's more, post-struggle re-building are likewise essential parts of humanitarian intervention (Bellamy, 203, 331). Humanitarian intervention is subsequently an action taken by a state, or other on-screen character, which meddles in the household undertakings of another state for good reasons concerning human rights. The meaning of humanitarian is critical in light of the fact that it structures the extent to which mediation is viewed as just. The solidarist-pluralist argument about who organizes intervention over the quest for the philanthropic perspective as it, "is fundamentally construct not in light of the sympathy toward reducing human enduring but instead on the thought that mediation must be transiently and spatially constrained in light of the fact that it damages the established guidelines of universal society" (Bellamy, 2003, 338). This is rather than speculations, for example, liberal cosmopolitanism, which take a more admonished perspective of worldwide society and compassion, in this way, organizing the mitigation of human enduring. It has been shown that the relationship between the ideas of intervention and human rights is gotten from hypothetical contemplations in light of levels of ethical quality and human rights. Basically, this influences the accentuation of different speculations as to humanitarian intervention. In an examination of humanitarian intervention, it is vital to see how they outline the sorts of issues and on-screen characters that are favored as critical, along these lines affecting the position they tackle issues inside of the civil argument. The term humanitarian is comprehended with reference to originations of human rights and profound quality. The capacity to characterize the philanthropic idea verifiably gets from specific hypothetical viewpoints on the all-inclusiveness of human rights. It is likewise conceivable that this affects the level of investigation with which scholars center their decisions. Humanitarian intervention is comprehended as a movement taken by a state, or other on-screen character, which meddles in the local issues of another state for good reasons concerning human rights. It has been exhibited that the relationship between the ideas of intercession and philanthropy is gotten from hypothetical establishments concerning profound quality and the comprehensiveness of human rights.

Theory of realism focuses on power of the state. Realist universal relations scholars regard worldwide society as a condition of insurgency (Gomes, 2010, 23). In Hobbesian terms, there is no "regular power to keep everyone" (Sikkink, 1993, 47). Basically, this shows the realist inclination of sovereignty over equity. Universal view suggests that in the condition of intervention, "universal conditions constrain states to protect their hobbies by as often as possible indecent implies, and this impulse of self-protection breaks down good obligations" (Forde, 1992, 62-63). Realists dissect that to accomplish the fact that in universal society, state is the power. In this manner, realists state advances the significance of state power above equality, and hence neutrality. Humanitarian intervention is likewise dismissed on the grounds of a dismissal of all inclusive human rights. Pufendorf (1682) contended that human rights are not all inclusive since there is no higher good power than the political state (Devetak, 2007, 151). In expansion, pluralists contend that the majority of universal society implies that there is no plausibility that there will ever be assentation over what constitutes human rights. In this manner, "common society's laws should not be grounded in conceptual magical characteristic laws, for example, all inclusive human rights (Devetak, 20087, 152). One of the suppositions of neoclassical realism is, as Hans J. Morgenthau (1967, 103) contends, every single individual characteristically looks to expand their power. The force looking for human instinct makes a circumstance where statesmen battle for control over different states. Morgenthau contends, "Legislative issues is a battle for control over men… the methods of getting, keeping up, and exhibiting it decide the system of political action." (1967, 103) In global governmental issues, states are constantly worried about national reserves, for example, security and economic gains. To save their interests, intervention could be an alternative. Morgenthau contends:

> *"Intervene we must where our national interest requires it and where our power gives us a chance to success. The choice of these occasions will be determined...by a careful calculation of the interests involved and the power available" (Morgenthau, 1967, 103).*

The foundations of realist school of thought were laid on a supposition that the political order and the way states follow up on universal coliseum are predicated by the human instinct. Its fundamental supposition gets from a human element, i.e., human desire and goal driving the course of worldwide governmental issues. However Kennet Waltz, a focused new-realist, guaranteed that the present worldwide framework is an anarchic domain with no focal force organizing and managing undertakings among states. It is not a human instinct but instead a systemic nature of the entire world that characterizes universal

legislative issues. Every state is in a quest for individual gains and its activities on a worldwide coliseum and they rely on upon its individual interests. Keeping in mind the end goal to accomplish its own increases states might make partnerships, however even inside such organizations together every state is just inspired by accomplishing its own targets. Anarchy of the worldwide framework is an order in itself. Worried with its security and advancement, every state is in consistent rivalry with different states. Force is focal in comprehension of the relations among states. Fear of force makes states to develop their arsenal, support up economies and create science and society. In a neo-realist world, the more strongly the state, the less helpless it is on the universal stadium. Military and financial ambit is the real criteria for security and improvement, and accomplishment of these criteria is to be achieved by every single conceivable mean. War, in neo-realism, is unavoidable. On the other hand, in an atomic century, wars among the atomic forces are unrealistic to happen effortlessly, since the states having atomic weapons understand the results of such a war, and in this way, utilize atomic arms stockpile as a method for discouragement and parity of forces. As it were, neo-realism is an assumption of equalization, and the rebellion of worldwide framework, is an order as opposed to a state of tumult. Neo-realism is known as a hypothesis of Cold-War, it works with the Cold War world, it is a hypothesis of bipolarity, resting upon its essential claims that multi-extremity and unipolarity in the long run lead to wars. Kenneth Waltz[2] contends that in a self-improvement universal framework, the state's outside power is resolved in view of its national interests. States ceaselessly try endeavors to protect their interests and to guarantee their survival on the grounds that in the self-improvement framework, everyone is on their own. Similar to Morgenthau, Waltz (1979, 103) contends that achievement implies conservation and fortification of the state's energy. To simplify, traditional neorealism concentrates on force looking for human instinct, though neorealism concentrates on an anarchic universal framework. Regardless of their diverse centers, both strands shed light on states' national interests and their longing to build power. This can be used to understand a few interventions in the next chapter which have been done without the approval UN Security Council and have been admonished.

Another branch of IR theory, liberalism, focuses on the insurance of human rights. The liberal cosmopolitan backing of humanitarian intervention comprises of three points: individuals have rights and liberties; all individuals similarly have these rights and opportunities paying little heed to culture, religion, state, and so forth; lastly, the insurance of

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[2] One of the most prominent scholars of neo-realism.

these rights is sympathy toward all people, states, national and global associations (Janse, 2006, 669). This gets from a perspective that puts stock in all inclusive human rights. As per Teson, "If people are denied fundamental human rights and are, consequently, denied of their ability to seek after their needs, at that point others have a by all appearances obligation to help them" (2003, 97). The infringement of widespread human rights is unethical. Vincent's examination contends that human rights, "are the rights that everybody has and everybody just as, by righteousness of their extremely mankind" (1974, 13).

A liberal, is one that has 'generally esteemed self-determination, group, and shared history', yet a liberal additionally has a 'more universalist origination of human rights in which sway is a backup and a restrictive quality' (Roberts, 2000, 3). Under such a structure, humanitarian intervention would plainly reflect moral and lawful standards. Without a doubt, states who commit genocide or different terrible human rights manhandle break their rights under sovereignty and per liberals, their authenticity and the privilege to oversee their own particular states' matters is finished. Moreover, Nardin (2006, 1-28) proposes that the non-intervention guideline naturally represents exemptions made to it, since a state exists to ensure the privileges of its natives, on the off chance that it damages those rights it loses its ethical reason and in this manner its resistance from outside intervention (2006, 12). Traditional liberals contend that individuals have principal normal rights to freedom comprising in the privilege to do whatever they think fit to protect themselves, if they don't damage the equivalent freedom of others unless their own safeguarding is threatened. People additionally have an option to not just be treated as objects but also as somebody with choices and powers. Similarly, a subsection of liberalism also believes that states can collaborate for a common increase. While liberals recognize that every individual or state looks for individual increase, they trust that states share a few intrigues, which can make both local and global collaboration conceivable. To bolster this contention, liberals refer to development of global associations, for example, the UN, as a sample of predominance of interstate collaboration. One of the strands of liberalism examining the legitimacy of humanitarian intervention is contemporary liberal internationalism. Michael Walzer (2000, 246), a main researcher of this strand, contends that military intervention can be defended if all else fails and as a way to shield regular citizens from human rights infringement, for example, genocide and violations against humankind. However, such intervention ought not to be attempted singularly, yet rather multilaterally with the approval of the UN Security Council in light of the fact that

liberal internationalists trust that multilateralism keeps incredible forces from seeking after national interests rather than humanitarian objectives.

1.3. Formation of the Concept of Humanitarian Intervention

International law is a set of mandatory rules that regulate the search behaviour of international actors giving those rights and duties. It is created by the consent of the nations-the main actors of the international system - which are sovereign entities and are not bound to any higher law without consent. They may, in legal terms, do what suits them, unless they have consented to a specific rule that restricts their rights. However, if the state has sovereignty, why decide to submit to the rules of international law? And once bound and placed in an international system that does not have a supranational agent responsible for monitoring and applying sanctions, why obey this law? The answer lies in the concept of legitimacy. This can be defined as "property law or institution that influences the observance of those to whom it is addressed, as they believe that the law or the institution is operating in accordance with generally accepted principles of law" (Brierly, 1958, 300).

Two elements are important in determining the legitimacy of a rule: authority and control. For a rule it has authority to be understood by states as law, as opinion juries. It should also control the behavior of nations. So the practice of nations should reflect what determines the standard. Interventions represent the weakest forms of 'legitimacy' violations of the norm of non-intervention, accepted by consensus at various universal legal instruments. Brierly (1958, 320), defined intervention in a broader sense, as any or every interference that a state does in the affairs of another sovereign state. In a narrower sense, the intervention only limits the independence of another sovereign state.

1.3.1. Humanitarian Intervention under the Cold War Era

Contemporary humanitarian interventions have emerged as possible practical after the end of the Cold War. During this conflict, some states that carried out military interventions could have used humanitarian justifications in their actions, but it did not. The intervention of India in East Pakistan (now Bangladesh); in Uganda by Tanzania; and Cambodia by Vietnam; as cases in which humanitarian issues could have served as a plausible justification for strengthening action. Even if in some cases these intervening countries have sought to base

their actions for this reason - the particular case of India is an example - they were unsuccessful and had to later revise their justifications (Holzgrefe, 2003, 15).

In the course of their argument, it shows that these justifications not revenge, as the regulatory framework was not favorable for this. The principle of sovereignty and non-intervention - politicized in the UN Charter[3]- had much more strength and prevented any justification for action aimed at protecting human rights. Therefore, even in such serious cases such as genocide was being committed by Pol Pot[4] the Vietnamese interveners preferred to abstain in regard to this argument. Fact that even had a strong support in international law, since Convention on the Prevention and Punishment of the Crime of Genocide[5] allows an interventionist action of the International Society in cases of genocidal practices, as can be seen in Article I: "The Contracting Parties confirm that genocide whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish".[6]

Parallel to the soundness of the principle of sovereignty and non-intervention, human rights went through an intense process of quantitative and qualitative developments in the period points out that, because of their remoteness in regard to international security issues, the UN began to worry about other issues: social, economic and humanitarian nature. Particularly with regard to human rights, their intense procedure will serve over time to strengthen the standard of protection of these rights and interconnect it directly to the safety issue (Crawford, 2002, 16-18).

Even with the intense procedural activities and the increasingly accepted notion of human rights protection, it can be said that there was no humanitarian interventions during the Cold War. The main factor that would justify humanitarian intervention during that period would be backed by the Security Council of the UN under Chapter VII of the UN Charter, which allows enforcement actions of the organization authorized by the Security Council (Charter of UN, 1945). But this did not happen - and unlikely to occur in view of the present

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[3] The Charter of the United Nations is the foundational treaty of the intergovernmental organization; the United Nations. It was signed at the San Francisco War Memorial and Performing Arts Center in San Francisco, United States, on 26 June 1945, by 50 of the 51 original member countries and came into force on 24th Oct 1945.
[4] Pol Pot was a dictator in Cambodia from Khmer Rouge party, responsible for the Cambodian Genocide.
[5] Adopted by the U.N. General Assembly on December 9, 1948.
[6] Ban Ki-Moon, (2004) Secretary-General's address to the Stockholm International Forum. Date: 1st Dec, 2015, Retrieved from: http://www.un.org/sg/STATEMENTS/index.asp?nid=749

situation in the bipolar conflict that paralyzed the Security Council. However, with the Cold War, humanitarian issues became associated with security. Then, the idea that human suffering in large proportions is a threat to peace and international security came into being. Thereafter, human rights came to be regarded as one of the components in the matter of collective security.

Resolution Security Council 794,[7] which aimed to protect Somali civilians, was indicative preceding first to the legitimacy of humanitarian interventions. Following this resolution, the Security Council tried increasingly to establish a connection between human protection in humanitarian emergencies and international security. During the 1990s, other humanitarian crises ended up being stage interventions. NATO intervention was the case in Bosnia[8] as well as intervention in Kosovo - there was no express authorization by the UN (Weiss, 2004, 135-153). Although many claim[9] that as the intervention in Kosovo was not legitimate, it should not be counted as a success, however, it seems as though the intervention brought peace to the region.

What has changed then in the transition from Cold War to post-Cold War was the fact that before the principle of sovereignty and non-intervention, which reigned almost as absolute, began to conflict with the protection of human rights. Regarding this conflict, an argument is fully in order to understand the issues of humanitarian intervention and its legitimacy. Today they can no longer be regarded as illegitimate. What can happen is that certain nation may question other factors such as operating efficiency, or not real humanitarian interest in who is intervening, but not with regard to legitimacy. Major reinforcements for that to happen were the aforementioned resolutions of the UN Security Council. These resolutions were based in that Chapter VII of the Charter, as mentioned above, which allows military intervention of the organization in cases of threat to peace and international security. So they provided the perception that an international custom was being set up. Another clear indication of the legitimacy of humanitarian interventions can also be identified on the embedded or doctrines developed by the UN itself.

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[7] Resolution 794 adopted in 1992, authorized the use of force in Somalia (UNITAF).
[8] Resolution 770 adopted in 992.

The latter is more evident to the question itself for its pragmatism. In a document produced by the International Commission on Intervention and State Sovereignty (ICISS) sovereignty becomes not only a right but an obligation of the State; and when a particular state is uninterested or unable to avoid serious humanitarian violations occurring on their territory, the principle of non-intervention gives rise to the principle of Responsibility to Protect. In 2005, in the World Summit held in Vienna,[10] UN incorporated the principle of Responsibility to Protect.[11] These are not legal documents, but serve as input in the formation of an international custom. Therefore, the legitimacy of humanitarian interventions, in general, is no longer something that is in the background when humanitarian crises are met and that standard must be placed face to face with other standards already established, especially with the principle of sovereignty and abstention. Even states that were initially very uncomfortable with the norm of humanitarian intervention, such as Russia, China, India and certain emerging countries, now seem to accept without strong objections. Soon, an international norm of humanitarian intervention can be clearly found under international law, or even still non-legal, but certainly within the ambit of moral standard of states.

1.3.2. Humanitarian Intervention –Aftermath of Cold War

The UN plays an extremely important role with regard to the settlement of international disputes. With the end of the Cold War and the sudden escalation of war situations, there was a considerable increase in demand for the UN to intervene in several regions, but especially in the more peripheral areas and the world's poor. Thus, Africa and parts of Asia has become the scene of an active UN intervention policy, not always reaching the expected results. However, various UN missions were not restricted only to these two continents. Equally important was UN presence in the Balkans and the Near East, to name the most serious cases of inter and intra-State conflicts (Bellamy, 2005, 32).

The intensification of the globalization process led to an internationalization process which promoted a global reconfiguration of wide scope, not so much in terms of military power, but mainly in proclaiming the economic and political order that was already taking

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[10] The 2005 World Summit, held from 14 to 16 September at United Nations Headquarters in New York, brought together more than 170 Heads of State and Government. It was a once-in-a-generation opportunity to take bold decisions in the areas of human rights, security etc of the United Nations.

[11] The responsibility to protect is a new international security and human rights norm to address the international community's failure to prevent and stop genocides, war crimes, ethnic cleansing and crimes against humanity.

shape since at least the 1970s and which underlay heavily on liberal principles. The culmination of this was the sudden and, to some extent unexpected collapse of the Soviet Bloc, which reinforced the changing trend and had, in turn, considerable political implications for the entire international system.

There is no doubt that with the end of the Cold War there have been changes in international relations. These changes certainly affected and continue to affect the model of social organization and political era of states within the eighteenth and nineteenth centuries. One of these changes concerns the issue of international security. Given that the tenuous stability provided by the bipolar system was broken with no time to implement an alternative model to take its place, led to a generated buzz of anarchy in international relations (Ayoub, 2002, 100).

Since its inception in 1945, the UN has been concerned with the issue of international security. The history of international relations during the twentieth century demonstrated the need for the existence of an international entity to seek to establish acceptable and parameters based on realistic terms so that peace could prevail among nations, or at least so that conflicts did not reach alarming levels and to generalize contaminating large areas to become world. The traumatic experience of World War One and the constant danger that a new even more terrifying conflict could occur, served as crucial elements for the creation of the League of Nations (LON),[12] UN predecessor.

However, the nature of the LON and the international context that emerged after 1918, practically impossible that that entity obtain success in their main objective, which was none other than avoiding war. The League did not have appropriate mechanisms for maintaining peace nor represented in fact the distribution of international power, given the absence in his picture of an actor highlighted the international scene: the US, which had assumed a posture more isolationist in World War I sequence. In addition, the League presented an overly Eurocentric profile, giving little attention to demands from countries outside the European context. In addition to the sharp ideological confrontation between liberalism, totalitarianism (Nazi fascism) and socialism, the ethnic nature of aspirations and the resumption of racism did not favor in any way, the desire for peace and stability international (Thomas, 2002, 178).

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[12] The League of Nations was an intergovernmental organization founded on 10 January 1920 as a result of the Paris Peace Conference that ended the First World War but failed to fulfill its obligations to achieve world peace.

The failure of the LON observed since the beginning of the 1930s, led to deterioration which was followed by international tension until the outbreak of World War Two in 1939. After that there is, then, the emergence of UN, with the primary purpose of regulating international relations for the purpose, among others, the maintenance of peace. On the one hand, the new international organization certainly benefited from the experience of the LON trying to correct the most basic mistakes that marked the functioning of the League. On the other, UN has established universal principles and learned to live with the reality of asymmetry of international power, creating mechanisms to respect, to some extent, the will of the superpowers, such as the system built around the UN Security Council and its veto power enjoyed by the five major powers.

A critical analysis of the role of the UN in the field of international security can be noted, first, as fragility and relative lack of preparation to face the new reality that emerged with the end of bipolarity. As already noted, during the period of the Cold War, UN had its field in the international security area constrained by the action of the superpowers and even the bipolar system logic, which recognize spheres of influence and yet was ruled a large scale, by legal aspect of non-intervention and respect for national sovereignty, principle considered almost sacred by the then rules. After a comparison of the the nature and quantity of UN interventions in international conflicts during and after the Cold War allows us to see, immediately, that there is a qualitative change in these two distinct historical moments. Consider this: from 1948, when for the first time the UN has sent a fact-finding mission to the region of conflict between Israel and the Arab countries, and 1989, have the number only 16 peacekeeping missions. So there is a contrast of 38 missions triggered from the early 1990.

The abrupt way conflicts intensified in a short period of time imposes some theoretical nature of reflections that can assist in understanding and explanation of the new reality and the way the UN is positioning itself to face the situation. There are several theoretical perspectives in analyzing the field of international relations that address the issue of security and the redefinition of the international system in the new context emerged with the Cold War. According to my perspective, one of the most consistent is the globalist side, which broadens the field of analysis, extrapolating the limits of realistic analysis, and brings new elements to the understanding of various world conflicts.

1.4. The Conflict of State Sovereignty and Responsibility to Protect

The responsibility to protect - doctrine created in response to the impetus of General secretary Kofi Annan on the need for the international community face react to critical humanitarian crises - had conceptual origin with the International Commission Report on Intervention and State Sovereignty presented in 2001 (Wedgewood, 2000, 834).

The responsibility to protect is a duty inherent in sovereignty, which would convert the state as essentially an agent for the protection of their people and the international community as the agent when the state is unable or contrary to such protection (Udombana, 2009, 1150).

Ramesh Thakur[13] points out that the reconceptualization of sovereignty liability was fruitful to attract African and Asian states, which were opposed to the paradigm of international intervention. He reflected on the need to balance the non-intervention to non-indifference and to see how the progressive implementation of the responsibility to protect is an amendment for the dominant paradigm of non-intervention debate of 1990s. The Iraq invasion in 2003 and Georgia[14] in 2008 are cases of responsibility to protect and how the action of the international community, although non-military, given the post-election violence in Kenya in 2008, was a successful case of implementation of the doctrine. Thakur, further argues that the failure to have extended the spectrum of just causes (genocide, ethnic cleansing, war crimes and crimes against humanity) leads to an inability to intervene if any natural disasters struck such as the Cyclone Nargis caused in Burma (Teson, 2001, 323).

The problem is that whether to intervene or not in critical humanitarian crises, researchers seek to know which agent should conduct a responsibility to "save strangers': the UN, NATO or the African Union, a state or a coalition? Beyond the legal legitimacy of the intervention of the agent - with or without Security Council authorization - the work focuses on the effectiveness of its implementation, which the author considers to be the central factor

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[13] Ramesh Thakur, a professor at the Australian National University and co-author of the report that gave rise to the doctrine, meets in The Responsibility to Protect - Norms, Laws and the Use of Force in International Politics a set of essays on the evolution and impact of doctrine in the conceptualization of the rules governing the international system.

[14] Russia intervened in Georgia, unlawfully as stated by the latter on the pretext of aggression against South Ossetia.

in setting the degree of legitimacy given agent may have in conducting a humanitarian intervention. In this sense, James Pattison[15] (2009, 364-391) argued that the legitimacy of an agent is conditioned by their level of effectiveness and the author divides into three types: local external effectiveness;[16] the overall external effectiveness;[17] and internal efficiency.[18]

Thus, in addition to the analysis of moral qualities of the agents and their unsuitability to their empirical scenarios which take place humanitarian operations, James Pattison ponders over the possibility of potential reforms in the actions of agents and the mechanisms available to the international community, for which it considers the doctrine of the responsibility to protect includes much broader actions than simply humanitarian intervention (2009, 364-391).

Who has the responsibility to intervene when necessary to protect strangers who are ethnic extermination target, genocide, war crimes and crimes against humanity? The international institutions at the disposal of the international community and the effectiveness of NATO are the preferred agent for the conducting of humanitarian interventions. The emergence of new forms of authority, such as the patent in the execution of protective actions through the use of conflict prevention, humanitarian operations, peacekeeping or administration of territories, the contemporary international order and to explain how that the concept of responsibility to protect may be considered an important regulatory progress (Bellamy, 2006, 130).

On scrutiny of historical and jurisprudential context of the fundamental concepts of responsibility to protect, i-e, 'protection' and 'sovereignty', by using the theoretical thought of Thomas Hobbes[19] and Carl Schmitt[20] and cases illustrative study, namely Iraq, Kosovo or Darfur, the centrality of the role of international institutions and stresses the real capacity of the UN and other international humanitarian actors, to act as an impartial agent, independent without becoming part member of the conflict. In International Authority and the Responsibility to Protect, Bellamy (2006, 130), argues that the impetus for protection as a

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[15] Professor at University of West of England, Bristol.
[16] If the agent's action raises or lowers the defense of human rights in the target community intervention.
[17] If the local action will impact the non-defense of human rights worldwide.
[18] If the local external action will impact the agent's home community.
[19] Thomas Hobbes, an English philosopher in the 17th century, was best known for his book Leviathan (1651) and his political views on society.
[20] Carl Schmitt (1888–1985) was a conservative German legal, constitutional, and political theorist.

central basis for that authority goes back to the times of the Protestant revolutions, bourgeois, communist and principles of decolonization, associating the concept of "authority" to capacity effective to ensure the safety and protection of the population - essential correlations to understand the doctrine of responsibility to protect. The responsibility to protect gives emphasis to the ability in fact an agent and not exclusively to their *de jure*[21] compliance, considering that the doctrine was established as an essential milestone in the evolution of existing legal-normative conception from the creation of UN.

1.4.1. What is State Sovereignty?

The treatment given by scholars from various fields of knowledge to the issue of sovereignty is far from converging point in a direction. In fact, the discussion about what would be the sovereignty and what their characteristics demanded fruitful work of writers to time and cultures, and not many common points can be set to outline as seminal concept. As exposes Evans (2006, 13), the subject of study "is one that has attracted the attention of state theorists, law philosophers, political scientists, internationalists, historians of political doctrines, and all those dedicated to the study of the theories and the legal and political phenomena" (2006, 13).

Because there is so little middle ground when it comes to the discussion, we must emphasize that exhaust the definitions of the concept of sovereignty make would be in addition to pretentious task, exercise questionable contribution to the subject of study. Wisely teaches Welsh that "in short, the challenge for the student of sovereignty is not to determine the timeless definition of the meaning and content of sovereignty but to explore the ways in which sovereignty has been socially constructed and reconstructed over time" (2006, 33).

The first of this quasi-unanimity rare among theorists of sovereignty, which will serve as the starting point in the study of the subject, with regard to his appearance be linked to the appearance of what we know as the modern state. Gibbs et al. (2009, 70) write that "in the strict sense, in its modern meaning, the Sovereignty term appears at the end of the sixteenth century, together with the State to indicate, in all its fullness, state power, unique and exclusive subject of politics." Similarly, Harff (2004, 32) attributes the birth of the modern state, especially with the advent of French absolutism in the seventeenth century, the origins

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[21] As a matter of law.

of the concept of sovereignty, which, was unknown in the Middle Ages and just came about when nation states started having power.

The different perspective to be proclaimed almost unison manner in classical doctrine relates to what is commonly defined as "attributes" or "characteristics" of sovereignty. As Welsh (2003, 550) states, "the sovereignty of the features, virtually all scholars recognize it as one, indivisible, inalienable and imprescriptible." These elements were present originally in drafting the Declaration of the Rights of Man and of the Citizen of 1789, and thereafter in most of the constitutions that are inspired by it. The first attribute or characteristic of sovereignty - the unit - is translated into the inability to exist two distinct sovereignties in a given territory. It is also used as a synonym, the term "absolute" to express this monopolistic character of the concept in the sense that the "sovereignty has come to mean supreme command and head of state," since "absolutism is a need for positivity of sovereignty" (Roth, 2004, 130). She also defines sovereignty in her classical way as an absolute and supreme power that a state has to command (Roth, 2004, 130).

Regarding the alienation of sovereignty, it is Kuperman (2008, 50) who first defines, based on the assumption that, as the general will is the one that can direct the state forces in pursuit, purpose being to guide government of the society (Kuperman, 2008, 62). The affirmation of the inalienable sovereignty by Kuperman, on the one hand was the basis for the revolutionary Constituent denied legitimacy to representative government, on the other, provides the foundation for understanding. Bass, (2008, 50) in the sense that the elected representatives exercise power of sovereignty according to general will that takes shape in laws. It seems that the central issue of discussion about the inalienable character of sovereignty can be summed up in two statements: a) that its ownership lies in general will expressed by the social body, as "body politic erected by the social contract is originally and forever holder" and b) that, as a result, the transfer of sovereignty dissolves holder or, emphasis added), "sovereignty is inalienable, as one who holds disappears when it runs out, is the people, the nation or the state" (Patterson, 2010, 44).

The third statement which produces a certain convergence being students of sovereignty is the sorting, splits or assign the concept has two aspects: first, internal, concerning the relationship of power and authority within a State; the second, external, with regard to inter-state relations in the anarchic environment.

The adjectives, classification, separation, or any are the substances made to differentiate what we call here the aspects of sovereignty reflect different prisms of this concept, is highlighting the issue of power, legitimacy, coercion, etc., internally, or conflicts, independence relations, in equality, etc., on the external front. However, Thomas, (2002, 170) epitomizes the classic notion in antithetical terms: while internally the concept of sovereignty is based on the belief that there is an absolute power within a community, on the other hand, externally, is based on the principle that, internationally, i-e., outside the jurisdiction of a community, there is no supreme authority.

In order to dismember the above statement, it can be from the idea (Wheeler, 2000, 79), that the content of the internal sovereignty aspect is characterized in two distinct biases: initially, is identified with the notions of authority and political power, and later with the legal legitimacy, which the author classifies as political and legal conceptions of the concept, respectively. Indeed, the division proposed by Wheeler is great value shows as we can with it to identify, from the first block, the authority and power of ideas, or "the idea of unifying power" (2000, 79) with Roth conception of sovereignty. In turn, Roth's of claim absolute sovereignty and supreme finds support at the time of social transformation that itself after the end of the Middle Ages, when it was able to identify a final political authority and centralized.

Thus, it is possible to assert sovereignty as "the highest, absolute and perpetual power over citizens and subjects of a republic" (Roth, 2004, 180). Roth has not only provided the theoretical foundations for the absolutist doctrine that prevailed in France of his time but also served as a starting point for the statements that Pattinson (2010, 80) identifies with the concept "political" of sovereignty.

Indeed, although the definition of what would be internal sovereignty bump into doctrinal differences and did not show the same cohesion that the statement of its occurrence - alleged in the present work only with regard to the fact of attributing generally an internal aspect and another external sovereignty - it can be concluded that two concepts are usually linked to the internal aspect of sovereignty, namely: the power and the legitimacy (or right).

1.4.2. Link between State Sovereignty and Human Rights Violations

International law of human rights provides unique differentiation from other branches of public international law: while the relationship subject to the rules other branches are marked by reciprocity and balance between states, the relationships governed by international human rights law are intended to stipulate the fundamental rights of the human being and ensure their exercise, usually with the state as required and the individual as a subject of rights. Stated otherwise, its object is the protection of fundamental rights of human beings and not the relations between states (Goodman, 2006, 141). The international human rights law, to be endowed with its own principles, solidifies effectively as an independent legal branch, provided with a wide variety of international protection instruments and that impose responsibilities and obligations for States with respect to individuals subject to its jurisdiction. Therefore, their observation and obedience go beyond the limits of strictly domestic concerns of the states, to also appear as a matter of international law interest, therefore subject to its regulations. It follows its internationalization and international human rights law.

In liberal nations, numerous individuals take their rights -particularly their human rights- for allowed. Notwithstanding, in a few sections of the world human rights infringement keep on continuing. While ensuring fundamental human rights might appear like an approach which all states and social orders can bolster, it remains a profoundly combative issue. Fundamental to the verbal confrontation is the issue of sovereignty. As it were, when, if at any point, states are supported, or maybe even committed, to intervene in another nation's inner undertakings to guarantee the security of human rights. This issue is further entangled by the high level of subjectivity in deciding the securities people are apportioned by the expression "human rights." Jack Donnelly (2003) trusts that human rights are just, "the rights that one has in light of the fact that one is human."

While the standards of sovereignty, for example, non-intervention and human rights might appear to be complimentary, state power, as an aftereffect of its hypothetical underpinnings, the standards it has set up, and its viable applications, has evidently hampered the usage of human rights. As Sens and Stoett clarify, state power came to fruition generally as a consequence of the Peace of Westphalia -which put a conclusion to the Thirty Years' War in Europe. Prior to the Peace of Westphalia, it was ordinary for religious gatherings to intercede in the inner undertakings of other states. In an endeavor to constrain the demolition

and wars that came to fruition as an aftereffect of outer mediation, the Peace of Westphalia was signed. It was one of the first formal acknowledgments of state sovereignty. The signatories trusted that such acknowledgment would serve as an instrument of peace by making regional states which were in control of their own local issues.

Therefore, the rule of state sovereignty is gotten from the conviction that non-intervention in the inner undertakings of states is the best arrangement to advance or, in any event, keep up global peace. While this may have been a satisfactory practice in the seventeenth century, traditional standards with respect to social equality and, all the more comprehensively, human rights have changed. Westphalian power no more gives an origination of human rights that is predictable with the beforehand specified records. Infringement of human rights keep on holding on, and the culprits keep on guaranteeing that they are sovereign over the inner arrangements of their state. In such cases, response is frequently constrained to measures, for example, financial sanctions, political judgment or, possibly, military action. Each of these measures has advantages; nonetheless, each can likewise facilitate worsen strained between state relations. Thus, a paradox exists; while regard for state power might promote worldwide solidarity, it can likewise undermine the establishments of human rights. By attesting that states ought not to be liable for impact from different states or global associations, Westphalian power places limits on other states' capacities to secure human rights outside their fringes.

One of such clashes between sovereignty and human rights was seen in the war led by Russia against its Chechen populace. Over the span of the contention, Russia was accounted for to have disregarded a few human rights through its utilization of "extrajudicial executions", torment, and assault against the Chechen agitators, and in addition the Chechen populace at large. These demonstrations are, in any event by the UN guidelines, plainly infringement of human rights on the premise of sex, religion, and the "status of the region on which" one was born. Despite these blatant transgressions with respect to Russia, the EU) whom numerous normal to intervene, was moderately noiseless on the matter. This, some theorized was the consequence of the European Union's enthusiasm for encouraging a "vital" association with RussiaAs Andrew Osborne contends, the EU "realizes that to voice its own particular conclusion on Chechnya is not without risk." Accordingly, there is a distinction between the hypothetical establishment of sovereignty and the safeguarding of human rights. For sure, by regarding Russia's inward sovereignty, the EU has figured out how to dodge the

genuine monetary and strategic repercussions that could go with taking a more grounded stand. For this situation, it appears that regard for state power remains contrary to human rights.

What's more, power has further troubled human rights in the way it has encircled interstate dialog and the choices which different states trust they have when people groups' rights are denied. Notwithstanding, the way both governors and the administered view worldwide human rights mishandle, sovereignty has further buttressed the burden of human rights upon 'Non-Western' governments, especially those that are undemocratic or non-common in nature. While couple of nationals of any liberal vote based system would contend that individuals ought to be victimized on the premise of race, sex, dialect, or religion, the fact is, that these are natives of popularity based (generally 'Western') governments.

In spite of some advancement in the spread of human rights, regard for states' power keeps on outweighing everything else. The mass spread of human rights keeps on being moderated by the Westphalian comprehension of sovereignty. States' disguise and reification of power has just exacerbated the circumstance. On the other hand, the initial step has as of now been taken by rethinking sovereignty. On the other hand, while progress towards the acknowledgment of all inclusive human rights is being made, it is still a long way from being acknowledged.

1.4.3. Failure of States in Protecting Their Citizens

The concept of sovereignty has been renovated both in theoretical and in its execution, and its limits outlined by international human rights law. Since the right influenced by reality, and before the changes experienced as a result of globalization, traditionalist's concepts no longer meet the present-day needs, a situation that is prompting the doctrine in the pursuit of developing a new concept of sovereignty adapted to emerging human needs. This stems from the fact that the concepts are built from the life situation, the commitment to reflect reality as closely as possible.

From the investigation of the structures of modern political organization, with a view to overhaul the state's functions in the course of the historical process, notably in the framework of international law, it is concluded that the State, conceived as a flexible

organization, has the scope to ensure the permanent supremacy of the popular will, seeking for both, preserving equal opportunities freely, the concrete expression of a just social order (Hehir, 2008, 65).

In the current meaning, the state stands as a human grouping defined territory, politically and legally organized that, in general, keep the idea of "nation". Therefore the political agenda would be to call it a state.

The state should relates to other groups, make commitments to the international community and should aim mechanisms to protect fundamental rights to survival of the human species, curbing the war, encouraging peace and honoring with commitments to other states and international organizations, subject to the applicable penalties for noncompliance. On the other hand, state should defend her right to sovereignty, should be respected in her full autonomy of decision, away from any further interventionist disease. To this end, the state draws up laws. In this context, the national law is one that is effective in certain state and international law governs different relations, whether the established between individuals of different nationalities, whether the completed between individuals with foreign states or between states.

It appears, therefore, that ownership is defined as the inherent characteristics. There is no state without sovereignty or this half. However, the right to sovereignty has undergone transformations. A state needs to open up somehow, and this process of opening calls into question the traditional concept of absolute sovereignty of states. At the same pace that the concept of state is being reshaped, also classically designed, sovereignty no longer meets the emerging needs of current life situations (Byers, 2005, 18).

It is necessary to adapt the principle of sovereignty to a more dynamic and flexible concept, but in a coordinated way in order to be able to produce social, economic and legal effects of greater intensity in individuals, providing them with greater opportunities. A more legal and less political sovereignty is necessary, for people to find their dignity in the law, because that's how it will free them from bowing before tyrants. Sovereignty thus is a quality of state power. In turn, the state power, a power of a legal nature, submits to the right, necessarily resulting in limited power. This means that sovereignty is limited to compliance with the law. As a result, one can only understand or try to comprehend sovereignty from the

point of view of the state to form a legally compliant system which focuses on streamlining the humanity (Stromseth, 2003, 32).

It is emphasized that the absolute sovereignty of the State and the international law of human rights are antagonistic terms. It must be accepted, necessarily, a review of the concept of sovereignty, not in the sense of a decrease or sovereignty by half, but that sovereignty is a state authority granted by international law. Therefore, state exercises in the legal hierarchy, as only the duties of their competence directed to the most logical achievement of ideals.

1.4.4. Non-Intervention Clause and Humanitarian Intervention

The international regulation of human rights is one of the areas - perhaps along with the global environmental regulation - that emerge with greater strength: a new type of international treaties: the normative multilateral treaties, which does not analyze an aggregate of reciprocal rights and obligations between the member states, but rather tries to establish a common normative discipline, which is compliant with the of the UN set the interest. Reciprocity gives, therefore, rise to notions of collective guarantee and public order.

In the field of international human rights law, it is very essential that the states respect human rights and hence they can legitimize their sovereignty. This concept has been shown by Farer[22] who states that:

> *"This personification of the international community idea in the field of human rights expresses the emergence of a new constitutional principle of international law, the principle of international protection of human dignity, possibly opposed to the constitutional principle of sovereignty, and which derive legal obligations or negative both positive, the States to the international community as a set (Farer, 2003, 53-89).*

In this regard, it can be seen that the international community and international law places more emphasis on the importance of human rights and the safeguarding on it and places universal obligations on people beyond their race, nationality, and creed. It is for this single standard that refers to overlay some structural provisions of international human rights law.

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[22] Tom J. Farer, is an American academic, author and former president of the University of New Mexico. He is considered an expert in international relations, as well as international politics and law and has authored many books on humanitarian intervention.

So the world is clearly facing an irreducible minimum core of rights enforceable, which realizes a consolidated universal common fund, but open, normative projection of human dignity. This fund expressed most often in a negative way that materializes like a catalog of protected legal interests regardless of any particularities of nationality or cultural matrix: life, personal physical and moral integrity, fundamental judicial guarantees (Rytter, 2001, 121-160).

Thus, it remains consolidated that the state's obligation, in the exercise of its sovereignty, should respect fundamental human rights as a constitutional principle of contemporary international law. Thus, there will be profound interest in human rights which has not become one of the most important perspective underlining the legitimacy of the government, internally and externally (Ayoob, 2002, 32).

1.5. When can a Military Intervention Be Classified as a Humanitarian Intervention?

The principle of non-intervention is therefore directly linked to the principle of state sovereignty and is a necessity in the current international system. Compliance is of paramount importance because at the time the compliance stops being respected principle, the order ceases to be international, and regulatory law becomes the domestic law of a universal state. The state sovereignty is so necessary for the international legal system, which is positively valued in various international legal text, like the UN Charter which asserts in Article 1 and 2 about the principle of sovereign equality for all member states under the UN (Ayoob, 2002, 32).

However, the concept of ownership is relative, since it depends on the time in which the international society is located. The disadvantaged states generally require sovereignty to defend against a possible intervention carried out for the benefit of some major powers. In fact the principle of non-intervention has, for the Third World Countries, been a saving block rather than a stumbling block. To the new independent states, often vulnerable to foreign pressure, the principle under discussion is defending the weak against the abuses of the strong.

However, the Charter of UN creates an exception to the rule to prescribe in the article itself that establishes the non-bias decision of UN if and when intervention is required. The intervention is therefore only considered wrongful where force is used in cases not authorized by Chapter VII of the Charter. At this point, it appears that respect for human rights is one of the main purposes enshrined in the UN Charter, and, in addition, several other international documents express the obligation of States to respect international humanitarian provisions.

Moreover, the expression "actions incompatible with the purposes of the UN", inserted in Article 2, paragraph 4,[23] reflects "openness" under the Charter, since the device allows you to add various unforeseen and future situations that may fall within the standard and enable the organization to act in certain cases (Kinacioglu, 2005, 15-39). The actions incompatible with the purposes of the UN are those contrary to the provisions of the first article of the Charter, namely: a) acts contrary to international peace and security; b) non-peaceful settlement of disputes; c) actions against the self-determination of peoples; d) actions contrary to the equal rights of peoples e) violations of human rights and fundamental freedoms. The inclusion of these terms demonstrates the concern to prohibit the threat or use of force not only in cases of territorial integrity or political independence of any state, but in any military action that is contrary to the UN purposes. Preventive intervention is characterized in this work, as the use of military force to advance the use of force. However, some authors make a distinction between early military action and preventive use of force. The first is used to describe military action against imminent attack; and the second describes the use of force against the remotest threat. As this differentiation refers to the precision about the imminence of the attack, the usage of the the two terms is interchangeable, always indicating the use of force before the enemy attack (Buchanan, 2003, 32).

Thus, the provisions of Article 2, Paragraph 7 of the UN[24] Charter tends to sag against the finding of a threat against peace, a breach of the peace or an act of aggression; where the UN, through the Security Council action, may take action, including armed in accordance with Chapter VII of the Charter in order to maintain or restore international peace. This chapter has in his art. 39:

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[23] UN Charter formulated in 1945.

[24] Nothing contained in the present Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters of settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

> *"Found either disciplined conditions in this article, the Security Council has discretion to adopt the measures provided for in the Charter, these provisional character (art. 40) or as coercive economic sanctions (art. 41) and the use of force (art. 42)."[25]*

Therefore, it is the responsibility of the international Security Council that it finds situations that may threaten peace and security and determine what steps should be taken to ensure that States fulfill, within its borders, documents the provisions to which they belong.

It is noteworthy that the dynamics of the international scene brought out the fact that states cannot tackle their own issues that require dialogue, which took care of modifying the traditional understanding that international relations are governed by derived rules entirely on the free will of states. However, one must consider the internationalization of human rights does not have the power to authorize another state to be erected as a judge of the matter to determine whether there is violation of these on a case; only the UN itself can act where it considers a threat to international peace and security. In any case, the answer to the aforementioned conflict of standards - between the established principle of non-intervention and state sovereignty in the face of humanitarian intervention - must be given by the UN Security Council - the body responsible for maintaining peace and security world - since it is up to this body to consider whether a case of violation of human rights constitutes a threat to international peace and security, an issue that overlaps the non-intervention of duty. It should be stressed that Article 2 enshrining this principle provides that enforcement measures under Chapter VII of the Charter are above the jurisdiction of States. So when authorized by the Security Council to intervene in order to end the human rights violations, is considered legal, otherwise military action against a State shall not be considered legal if used within the planned exceptions in the Charter (Art. 51 - self-defense and application of Article 39) (Roberts, 2003, 40).

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[25] UN Charter, 1947.

CHAPTER TWO: THE ROLE OF UNITED NATIONS AND RECENT CASE STUDIES OF HUMANITARIAN INTERVENTION

2.1. Link of United Nations and Humanitarian Intervention

The non-intervention in internal affairs of sovereign states is an important standard because it affects both order and justice. The order establishes a limit to the chaos. The international anarchy - the absence of a superior government –shows the overall lack of governance. Sovereignty and non-intervention are two principles that provide order in an anarchic world system. At the same time, the action affects justice. The national states are communities of people who deserve the right to develop a common life within the confines of their state. Those on the outside must respect its sovereignty and its territorial integrity. Sovereignty is a concept that has been applied by many states where it fits poorly. For example, the struggles of groups and clans mean that no government was effectively in control in Sierra Leone, Liberia and Somalia in the early twenty-first century. Even children were forced to participate in the battles. So there is always a tension between justice and order which leads to inconsistencies as to intervene (Frank; Rodley, 1973, 275).

It is precisely because of this complexity; idea of intervention fell under the ambit of Security Council of the UN, and has been guided by more political considerations rather than legal. Just consider the fact that the body has responded differently to similar situations related to the maintenance of international peace and security, as evidenced by the recent intervention that toppled Libyan dictator Muammar Al Gaddafi and the humanitarian crisis in Syria, both involving massive violations of human rights.

Along with the political discussions, it follows that while Article 2(7) aims to safeguard the principle of state sovereignty, it loses strength before an international law increasingly committed to the protection and promotion, which has led to a restrictive interpretation of this article in the event of occurrence of massive human rights violations (Frank; Rodley, 1973, 275).

It should be noted in the speech by the then Secretary General Boutros-Ghali[26] where he stressed that absolute sovereignty is not required anymore. It is the task of leaders of States today to understand this and to find a balance between the need for good internal governance and the requirements of an increasingly interdependent world (Weiss, 2004, 137).

Indeed, the introduction of concern about human rights violations and international humanitarian law in the practice of the Security Council and its consideration in the context of Chapter VII of the Charter, i.e. in order to authorize a military intervention with a view ceasing said violations, is a recent manifestation of phenomenon. The starting point can be identified in Resolution 688,[27] in which the Council relates to the Iraqi government policy of repression the Kurdish minority, to international peace and security and urges countries to contribute to the operations of humanitarian aid to be organized by the Secretary General of the UN (Gibbs, 2009, 34).

Despite the fact that this resolution does not make express reference to Chapter VII of the Charter, it addresses the need of establishing a linkage between humanitarian crisis and a threat to international peace and security. The point of reference of this resolution can be found on account of authorizations forced on Rhodesia and South Africa, albeit defended by the likelihood of provincial shakiness, showed, indeed, the dismissal of the global society of the regulated prejudice did by those nations (Goodman, 2006, 110).

From there, the practice of the Security Council evolved to incorporate concern about violations of human rights and international humanitarian law in its responsibility of maintaining international peace and security, authorizing, where appropriate, the use of force to deter such violations. The civil war in Somalia[28] represents the culmination of this evolution.

From there, the Council in its resolutions consolidates the relationship between international peace and security and violation of international humanitarian law, always

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[26] Secretary-General of UN in 1992 wrote a report titled "Agenda of Peace" as a response to the request UN Security Council for an "analysis and recommendations" to strengthen peacemaking and peace-keeping. The document outlines the way Boutros-Ghali felt the UN should respond to conflict in the post-Cold War world.

[27] Resolution 688 adopted by UN Security Council on 5th April 1991 condemns the repression of the Iraqi civilian population, including a clause to protect Kurdish refugees on the Turkish border.

[28] The Somali Civil War is an armed conflict in Somalia that started in 1991, following the overthrow of the dictator, Siad Barre.

invoking Chapter VII of the Charter, as can be seen in later cases such as the genocide in Rwanda in 1994, the internal conflict that devastated Haiti 1995, at the same time and recently in Libya crisis, which culminated in the fall of Libyan dictator Muammar Al Gaddafi 2011.

Thus, there is a clear evolution in the practice of the Council to create a new exception to the prohibition of the use of force in international law, called humanitarian intervention, as it aims to cease violations of human rights and international humanitarian law in the event of the governments involved not being able to stop them or do not show interest.

However, as can be noted by the cited precedent, the use of force to deter preceded violations requires formal authorization from the Security Council under the provisions of Chapter VII of the Charter, that is, in strict compliance with previously established rules on use of force in international relations. It is important to clarify, however, that the rules on the use of force have not changed, what you have is simply the consecration of an interpretation of international law which focuses on the protection of human rights and international humanitarian law. Any military intervention to stop the violation of these rights should of course be preceded by the Council authorization, as stipulated in Article 42 of the Charter.

The consecration of this idea can be found by analyzing the report submitted by the High Panel Secretary level[29] which included the participation of sixteen leading figures in international affairs, from former prime ministers, foreign ministers and ambassadors, of which we can mention the Brazilian diplomat and former Secretary-General João Baena Soares, shows that the principle of non - intervention, expressed in Article 2(7) of the Charter cannot be used to protect acts of genocide or other atrocities on a large scale that can be considered as a threat to international security and as such provoke action by the Council (Glennon, 2003, 32).

The Report points out that there is a growing recognition that the issue is not right to intervene of any state, but the responsibility to protect of every state when it comes to people suffering from avoidable catastrophe, such as mass murder and rape, ethnic cleansing by forcible and terror expulsion and deliberate starvation and exposure to diseases. There is a

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[29] UN General on Threats, Challenges and Change of December 2004, entitled "A more secure world: our shared responsibility", which launches bases around the concept of "Responsibility to Protect".

growing acceptance that while sovereign governments have the primary responsibility to protect its own citizens from such catastrophes, if they were unable or unwilling to contain, this responsibility must be assumed by the international community, through measures prevention, repression, violence, if necessary, and reconstruction of destroyed societies (Glennon, 2003, 32).

In its preamble, it is determined that war must be prohibited at all costs to save further generations and Article 1 of UN Charter also stresses on the maintenance of international peace and security and if there is need then collective measures should be taken. Thus, threats of attack to a State must be solved collectively and peacefully.

Unlike the Kellogg-Briand Pact,[30] the UN Charter prescribes not only the war, but the use of force by states. Article 2 (4) provides that "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 any other manner inconsistent with the UN Purposes." This rule has become customary principle of international law norm binding on all states and not just the UN.

According to Article 39, the Security Council should decide the presence of any risk to peace, break of the peace or demonstration of animosity and might make proposals, or choose what measures should be brought as per Articles 41 and 42 to keep or restore global peace and security. The Council is not only responsible for determining a threat as it is also the one who has the power to authorize an action with the use of force.

The Charter sets out in Chapter VI guidelines for states to avoid resorting to the use of force and to resolve their disputes peacefully. Where this is not possible, States should submit the matter to the Security Council to decide whether the dispute is a threat to the maintenance of international security. It will be up to that body to recommend the shares as it deems appropriate to the settlement of the dispute. Thus, it would be only the Council to determine a preventive action with the use of force (Gordon, 1996, 39).

The right to self-defense, expressed in Article 51 of the Charter, is the old principle of international law. According to this article, "nothing in the present Charter shall impair the

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[30] The Kellogg-Briand Pact was an agreement to outlaw war signed on August 27, 1928.

inherent right of individual or collective self in the event of an armed attack against one of the UN, until the Security Council has taken measures necessary to peacekeeping and international security". This statement gives rise to discussion of the need for an enemy attack so that only then the attacked state can use force within their rights to self-defense.

2.2. The Significance of Declarations by UN General Assembly and UN Security Council Resolutions

Preventive action has been defended on humanitarian grounds from the so-called responsibility to protect. According to this, states have the responsibility to protect populations suffering from civil war or severe violations of human rights. Although it hurts the principles of sovereignty and non-intervention in internal affairs, the states would, in order for global peace (Goodman, 2006, 110.) Where a populace is enduring genuine damage as a consequence of war, restraint, state failure, and, for this situation the state does not need or can't stop it or maintain a strategic distance from it, the rule of intervention comes in. Thus, the preventive intervention would be held in order to make that human rights are respected and prevent the suffering of those people is perpetuated for long (Henkin, 1999, 26).

However, the question remains as to the determining of humanitarian preventive intervention and who would bear the financial burden of the operations. The actions in Yugoslavia, Somalia, and Rwanda showed that the cost can be very high, including in terms of legality and legitimacy.

According to Article 2 (7) of the UN Charter, as mentioned above, states cannot intervene in the internal affairs of another state. A humanitarian preventive intervention could only be legally with state authorization in crisis or the Security Council. However, Council actions to deal with these cases have not been, so far, neither consistent nor very effective, often acting too late.

It would be necessary for the international community to assume this responsibility to protect. The first step would be to stop the violence through mediation and other peaceful tools; population protection with humanitarian aid measures and ensuring human rights. The force if necessary would be used only as a last resort (Hehir, 2008, 96).

Our shared responsibility of the high level of the General Secretariat of the Convention on Nations argues that there is a universal responsibility to protect, practiced by the Security Council approving military intervention if all else fails, in instances of genocide and annihilation, ethnic purging or genuine infringement of international humanitarian law where states couldn't or didn't want to stop (Clarke, 1996, 75).

Humanitarian preventive actions are legitimized by both the states and the international civil society and the epistemic community, however, the legal parameter has not yet been determined. As for the possibility to make positive humanitarian preventive intervention, states may be hesitant to sanction preventive intervention as this can be utilized by the as points of reference that could legitimize intervention in their states (Byers, 2005, 16). It is necessary that such measures exist for UN legitimacy.

2.3. Inadequacy of Security Council in Managing Humanitarian Intervention

The reformulation of the Security Council still has relevance for the new feature that took the international community, with the disappearance of bipolarity that divided which was reported. During the recent activities, US interest has resurrected important issues which have remained still unresolved. This is the case of the exercise of the right to veto decisions on cessation of penalties against offenders as happened with Iraq, in the episode of the Gulf War. In the past, the United States and Britain were advocating a position contrary to the one adopted in this episode, in which they can maintain the sanctions until otherwise decided by the Council, where they can use the right of veto. The suspension of sanctions against Rhodesia, approved by the Security Council, it was decided unilaterally by the United States and England, who considered they had been imposed determinations met. If the Charter remains silent on the suspension of coercive measures, each state do so, without hearing the Council against what was manifested (Hirsh, 1995, 789).

On May 25, 1993, Resolution 827[31] made an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international

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[31] Unanimously adopted by UN in 1993, in order to prosecute those responsible for violations of humanitarian law since January 1991 in the former Yugoslavia, after having configured the failure of attempts by Commission on Human Rights of the United Nations; Conference on Security and Cooperation in Europe (CSCE) ; European Community (EC); and International Conference on the former Yugoslavia, as well as initiatives approved by them, which included condemnation of the atrocities, publication, dissemination and finally, an investigation.

humanitarian law and gave jurisdiction to hear charges of war crimes and crimes against humanity, including genocide and does not cover crimes against peace, contrary to what was anticipated in the Courts of Nuremberg and Tokyo (Hilpold, 2001, 439). This, incidentally, is the first UN initiative to examine and prosecute war crimes after those controversial courts, and is expected to be institutionalized as an effective means to judge crimes that nature committed in within the states. Significant number of countries made suggestions and comments, including Brazil, demonstrating the interest of the international community for the initiative.

But it's not just what comes down the desired reform of the Charter. There is sharp criticism against the role of the Secretary General and the work of the General Assembly, responsible for the disorder introduced by the multiplicity of committees, subcommittees and bodies created, many of which duplicate, creating an institutional shambles causing great confusion.

The major criticism, however, focuses on the voting system, in which each member has one vote, regardless of its population and presence on the international stage. Miniestados as Seychelles, Antigua and Barbuda, Grenada and the Dominican Republic, with a population of a few thousand inhabitants, has the same vote that India and China (Kuperman, 2008, 58). In 1984, 29 states had less than one million inhabitants, significant numbers to influence the outcome of any relevance of voting and, therefore, gave rise to considerations of lack of realism and legitimacy resolutions that do not have the support of countries with the highest expression, but the great powers.

However, the General Assembly is the most important organ of the Organization and plays a role in its evolution and development of international law, as reflected general aspirations of the community as a whole. The themes selected for special conferences denote specific concerns and effective strategy to provoke a thorough examination of issues of general interest.

In this context, it includes the Stockholm Conference on the environment, 1972; Rome on power in 1974; the Bucharest in 1974, also about food; Mexico, in 1975, on women; in Vancouver, 1976, Human groups and subsequently on job; the Mar del Plata, on water and so

many others, such as the River, 1990, on the environment, which was highly publicized (Senarclens, 1988, 149).

Such meetings and the resolutions produced provoke studies and draw attention of the state authorities and various actor that influence decision-making, establishing parameters and standards of conduct that end up imposing on his own authority, such as the resolutions on means environment, torture and terrorism, issues that have preoccupied the international community as a whole, alongside the issues related to economic development and hunger.

Dominated by non-aligned countries of the past, the General Assembly became the stage for the externalization of aspirations, though little serving for conducting diplomatic activities, yet exercised directly outside the scope of the organization. The major criticism lies in the tumultuous way it has been acting, producing large number of documents, reports and records, often poorly written or written blistered, without objectivity; other times, dealing with matters already examined by other bodies or commissions (Lillich, 1973, 772).

In addition, General Assembly intended to regulate the activities of the Economic and Social Council, which has granted similar tasks to the Human Rights Commission and various committees, which only compromises the efficiency of the Organization. The universal participation in this Council, giving it exclusive jurisdiction over certain matters, such as those relating to human rights and social activities, would save time whereas General Assembly can only deal with tasks related to political matters.

2.4. Recent Case Studies of Humanitarian Intervention
2.4.1 Humanitarian Intervention in Somalia
2.4.1.1 Historical Background

The away time after the overthrow of President Mohammed Siad Barre marked the end of the era, with the victory of three of the main Somali armed groups: Congress Somali Kingdom (USC), which fought in the center of the country and the capital, and the directly responsible for the ouster of President; the Somali National Movement (SNM) that fought against the Barre's army in the north; and Somali Patriotic Movement (SPM), responsible for clashes in the south. The Barre drop also marked the beginning of this false claim in Somalia, where each clan or sub-clan came to be organized also in armed militias, more or less

firepower, and the fight for control of a region or tract of land. The USC, victorious and now controlling Mogadishu was divided when Mohamed Aideed Farad general opposed the self-proclamation of Ali Mahdi Mohamed, his rival in the movement's leadership as President of Somalia and the start of assembly of the presidential office. Aideed and his allies, who were still struggling south of Mogadishu against what is left of Barre troops - represented by the National Somali Forces (SNF) promoted the division of the Kingdom Somali Congress. The division USC two Hawiye sub-clans also represented the capital of the division into two distinct areas: the north was controlled by the Abgal, Mahdi allies, while Habir Gedir, led by Aideed, controlled the south, including the port and airport of Mogadishu (Macfarlane, 2004, 977).

This internal division weakened as it drew political leadership responsible for the restoration of the Somali state institutions. What really happened was lack of a group that really controlled the capital (or the main institutional and policy instruments), which presented itself able to exercise the power of governance in Somalia. The power vacuum left by Siad Barre's fall turned out to be filled in different ways in different regions of the country. The lack of a central authority that saw the Somali situation in a way macro led to a kind of regional isolation of each area of the territory, with the aggravating circumstance that only in the north-central and northeastern regions the clan conflicts could be solved. These regions Somali Salvation Democratic Front (SSDF) had more support (or less opponents), achieving some stability in control of much of these areas and having the opportunity to fight, even minimally, the effects of famine. Somali National Movement quickly gained control of the northwestern region of the country, getting to unilaterally proclaim independence and recreating Somaliland within the territorial borders of the former British colony.

In south-central and southern regions of the country, anarchy and famine were felt more forcefully, especially in the once prosperous area between the Juba Rivers and Shabele and the region of the capital Mogadishu, where no group conflict could exercise *de facto*[32] control. Consequently, violence was more exercised and the effects of famine were more senses precisely in those areas where there was a specific group in control, just in central and southern Somalia. The area was better known by the international media was a triangle between the towns of Mogadishu, Kismayu (further south) and Belet Weyn (north of the capital). They developed two distinct levels of violence: Clans and sub-clans organized into

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[32] Latin expression which means in practice but not necessarily ordained by law.

militias fighting each other in an attempt to control the most fertile areas rich in natural resources (such as the area between the Juba and Shabele rivers); and the unique practices of theft, looting and intimidation by armed adolescents and young people without clan bonds, known as mooryaan.

The hunger spread by inclement Somalia also was caused by the displacement of the guerrillas through the region between Juba and Shabele. Soon after the overthrow of Siad Barre, the USC, mostly Hawiye, it occupied the capital and areas to the north, expelling the Darod and the Marehan sub-clan much of which formed the SNF. But before there was a regroup in the region between Kismayu and the borders with Kenya and Ethiopia, and while fleeing counteroffensive USC Front soldiers burned as might farms and plantations, raped women and killed civilians.[33]

2.4.1.2 Interventions in Somalia

When the first American troops landed on the beaches of Mogadishu, on 9 December 1992, Somalia was already delivered to chaos and anarchy for almost two years. The overthrow of the former dictator, Gen. Mohammed Siad Barre, had occurred on January 27, 1991 and subsequent dip in the Hobbesian state of nature occurred progressively and quickly thereafter.

The arrival of US forces, which formed the Unified Task Force (UNITAF), can be taken as a milestone in the action of humanitarian intervention. The catalyst for this action, approved by the Security Council, was international public opinion (especially the US), who attended the televisions and print the images of the Somali people starving dying of starvation while numerous militias fought each other for control of capital Mogadishu and other regions in central and southern parts of the country. In the eyes of the international community, Somalia was seen as a kind of "mad max of warlordism" (Murphy, 1996, 50).

The departure of the last soldiers of US troops on March 25, 1994, was due to the American public opinion. Once again the citizens of the United States found themselves shocked by the images on televisions and from the pictures in magazines and newspapers. This time, no more than poor women and starving children, but factional militiamen who

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[33] The most representatives of Rahanwin Digil clans and sub-clans and Gosha and Banadir.

were dragging the bodies of US soldiers through the capital's streets. Even after complete removal of the UN effective in March 1995, the country remained virtually the same: it was still seen as a no man's land; Somali people still suffering from lack of food, medicine and clothing; State institutions remained missing and clan leaders were still struggling with each other to maintain and expand its territorial conquests. After six meetings[34] coordinated by the UN, almost no progress has been achieved in attempt to the country's political reconciliation and the little they had gained during the mandates was lost quickly. In short, after just over two years of activities in Somalia, the UN and the US reaped a resounding political failure.[35] But the UN began apprenticeship on the proposed challenges and taxes for humanitarian intervention, peacekeeping.

The first UN effective step had been given between 3 and 5 January 1992, when the Asst. Secretary-General James OC Jonah, visited Mogadishu in a fruitless attempt to take Aideed and Mahdi to cease hostilities. The ceasefire would only be signed on 3rd March 1992, at a meeting in New York with the leaders of the Organization of the Islamic Conference attendance, the Arab League and the Organization of African Unity. The signing of the agreement enabled the adoption of Resolution 751 by the Security Council.[36] Six UN programs and 30 supporting organizations took care of humanitarian aid to the population suffering from hunger and epidemics, a special mission called UN Operation in Somalia (UNOSOM). The General Secretary of UN Boutros Boutros-Ghali chose the Algerian diplomat Mohamed Sahnoun as UN Special Representative in Somalia (Nardin, 2002, 55).

The first members of the UN permanent representation since the fall of Siad Barre arrived in Mogadishu on May 9, 1992, to ensure the distribution of food to the Somali population. The arrival of help humanitarian had the consequence of non-scheduled and non-intentional to promote new battles for control of ports and airports, as well as goods distribution routes where protection against looters and other armed groups could be sold for humanitarian aid organizations (Focarelli, 2003, 210).

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[34] New York, Bahr Dar, Addis Ababa I, II Addis Ababa, Addis Ababa and Nairobi III, the last four gathering 15 leaders of clan factions.
[35] At the end of 1994, the city streets were already again taken by militiamen who promoted kidnappings and random killings.
[36] Resolution 751 signed on 3rd March 1992 which reaffirmed the ceasefire and established the setting up of a UN Security Force and sending 50 observers to monitor implementation of the agreement.

In August, it was that there were 1.5 million - a quarter of the population - at risk of starvation and asked to send a force to ensure armed protection to the task of making humanitarian aid actually reaching the public. A troop of 500 peacekeepers, assigned by the Pakistani government, was sent shortly after the Security Council voted to send a total of 3500 men to protect groceries trains.

2.4.1.3 Somalia's Failure & Subsequent Rehabilitation Process

Several attempts were made in building consensus among the warring groups, trying to promote disarmament, ceasefire and the establishment of a new permanent government. Such agreements also provide for the unification of the territory, with the re-annexation of Somaliland. However, they were always the negotiation meetings postponed and when a result was produced, some leaders simply ignored.

The US sent a series of weapons for the current Somali government; on the grounds strengthen security so that the state could make its necessary political reforms. However, the retaliation from the other movements of the rebel clans was immediate. While the aids come in the form of military and financial resources to increase the physical violence, over 1.5 million Somalis displaced people roamed the regions of the country without any condition for survival since neither can count on assistance from aid international humanitarian. All international aid actions made possible by peace humanitarian interventions in Somalia were faced with an internally polarized society between well-organized radical groups, which constantly were against such interference. Although these groups had conflicting political interests, the interference by other countries in the dynamics present in Somalia has been a considerable factor for articulation of these radical groups, which contributes to the ineffectiveness of peace operations due to their lack of legitimacy.

This external interference carried out on behalf of international organizations or by unilateral initiatives in certain states is legitimate to the extent that it considered necessary actions for the restoration of peace in Somalia. However, trading of shares were made from alien forms civil society itself not militarized and marginalized, taking into account only the liaison with local chiefs, warlords, clan leaders. The existence of a large number of clans, militarily organized, is one of the factors that support the theory of failed states (or quasi-

states) to the extent that the dispute of political power, in the case of Somalia, has become a rampant civil war (Pattison, 2010, 180).

External financing was not only addressed to help uplift of national institutions; several times the members of peacekeeping operations were forced to bribe their own militias to open passage for transporting food for the destitute population. Separatist and corrupt militias have existed along the history of several African countries who exercise their power to prevent the transport of humanitarian aid as a bargaining chip to get resources to fund their military activities.

The operations carried out in Somalia did not achieve its main objectives, but raised situations which clarified the understanding of the critical situation affecting the country up to the present day: the power of clans during the development of the history of the country increased international inability to deal with the Somali problems that now overflowed the state's legal boundaries, with major disruption to their neighbors with an increasing number of refugees.

It is difficult to predict with some degree of certainty a positive future aimed at their reintegration. While organized rebel groups are treated as real actors in the reconstruction of the Somali state, they will continue to take advantage of their status to articulate their particular interests. In this case, the power of institutionalization to the clans has been seen failing that, historically, those capable of being inserted into the political environment have shown illegal practices of action (Pease, 1993, 280).

Valuing non-militarized civil society should overcome its characterization as aid object passing also be configured as an active and indispensable actor in the reconstruction of the Somali state. By exhausted all means of pacification and restructuring of the country, the decision-makers not to see this approach as inseparable from the resolution of the Somali conflict hardly advances in the region.

2.4.2 Humanitarian Intervention in Kosovo

2.4.2.1 Historical Background

When NATO decided to put into Operation Allied Force[37] on March 24, 1999, the situation of Kosovar-Albanian population in Kosovo was terrifying and shocking as already highlighted the UN Secretary General himself, Kofi Annan, in his report on the situation in Kosovo in the light of resolutions of the Security Council 1160 (1998), 1199 (1998) and 1203 (1998) emphasizing the atrocities and violence committed by Yugoslav authorities in Racak, where Serbian government forces engaged in combat with the Kosovar-Albanian guerrillas (Pease, 1993, 210). In these reports, there are references to the information provided by the UN High Commissioner for Human Rights, the High Commissioner of the UN for Refugees, the Kosovo Verification Mission (Kosovo Verification Mission) of the Organization for Security and Cooperation in Europe (OSCE) and the Secretariat-General of NATO itself, with which the UN Security Council and the Secretary General exchanged newsletters even before the start of Operation Allied Force (Welsh, 2003, 180).

This same critical scenario was reminded by the judges of the International Court of Justice ICJ in the judgment of the individual protective measures required by the Federal Republic of Yugoslavia against 10 NATO members who participated directly in the attacks made to the Yugoslav territory. For various reasons, the Court, by majority vote and on a case, decided not to grant the injunction[38] claimed by Yugoslavia In the case Yugoslavia v. Belgium, for example, two of the judges dissenting opinions, Weeramantry and Vereshchetin, recalled the atrocities committed in Kosovo. Weeramantry, in particular, points out that many lives, including women and children are being lost every day, exposed to suffering and unnecessary dangers, in addition to serious tax property damage by conflict, comments, highlights, it applies to both parties, members of the NATO and Yugoslavia; and concludes that the Court should issue a preliminary injunction for both parties to desist from the practice of all sorts of acts of violence (Franck, 2003, 204). However, at this stage prior to NATO attacks, the only interference of the international community in Yugoslavia was the jurisdiction of the International Criminal Court (ICC) established by the Security Council to

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[37] Federal Republic of Operation Allied Force
[38] The immediate cessation of the use of force by the respondent states.

investigate, prosecute, try and convict individuals who have committed atrocities in the former Yugoslavia from 1 January 1991, with emphasis on conflicts that erupted separatist movements in Bosnia and Herzegovina and Croatia. Until that fateful day March 24, 1999, the measures taken against the Federal Republic of Yugoslavia were the Security Council's own initiatives,[39] distant use of strength to maintain international peace and security, force this, according to the UN Charter (art. 39 and 42), monopoly of that Council. (Franck, 1999, 857-60) It is at this point, the legitimacy of the use of force by NATO in spite of express Security Council authorization (Art. 53, 1), which we intend to analyze.

The UN Charter Chapter VII regulates the actions related to threats to the peace, breach of the peace and acts of aggression, elements that allow curious interpretations of the concept advocated collective security in the Charter, based on peace and acts of aggression. Indeed, the doctrine has been considering as acts of threat or breach of international peace, for example, the ecological accident trans-boundary effects, which are not characterized as acts of aggression along the lines of the Declaration on Aggression, nor in any of the environmental conventions.

So acts of aggression are typical acts? Yes and no. The typical acts of aggressions are stated. However, in addition to acts of aggression set out in Declaration on the Definition of Aggression 1974[40] some mutual assistance agreements, such as the Inter-American Treaty of Reciprocal Assistance of 1947,[41] provision for recognition of other acts of aggression by consultation bodies set up under the Treaty. Thus, acts of aggression are not to be considered in international collective security atypical acts and not declared by organs of regional agreements or mutual assistance, as well as those whose effects despite international territorial extent of the conflict, does not produce extraterritorial i.e. out of the battle theater, so as to affect international peace and security (Pease, 1993, 314). The legitimate use of force, therefore, is not the monopoly of the Security Council. The UN Charter, still in Chapter VII, provides in Article 51 the possibility of legitimate individual or collective self in the event of any armed attack against one of the UN, until the Security Council has taken measures necessary to maintenance of international peace and security (Heiher, 2008, 90). However,

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[39] Resolution 1160 (1998), Resolution 1199 (1998) and Resolution 1203 (1998).

[40] Adopted by the United Nations General Assembly on December 14, 1974 as a non-binding recommendation to the United Nations Security Council on the definition it should use for the crime of aggression.

[41] The Inter-American Treaty of Reciprocal was an agreement signed on 1947 in Rio de Janeiro among many countries of the Americas. The central principle contained in its articles is that an attack against one is to be considered an attack against them all; hemispheric defense.

this gives rise to another complication over the application of Article 51 on Yugoslavia vs NATO case.

2.4.2.2. Question on the Authorization of Kosovo's Intervention by NATO

> *"Nothing in the present Charter shall impair the inherent right of individual or collective, in the event of an armed attack against a UN member until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately informed the Security Council and shall not in any way reach the authority and responsibility as this Charter gives the Council to carry out, at any time, action it deems necessary to maintain or restore international peace and security" (Henkin, 1999, 828).*

The answer to the question posed raises more questions than conclusions. There are at least four propositions that can be drawn from Article 51 to be thought of in relation to NATO and the attacks on Yugoslavia: a) the legal nature of NATO; b) if the article also applies to internal conflicts; c) applies only to the UN; d) behaves considerations of a humanitarian nature; e) if NATO hit the authority and responsibility assigned by the Charter to the Security Council.

NATO, an international organization designed exactly for the exercise of collective defense referred to in Article 51 of the Charter, even though the most attentive critics of NATO's intervention want their territorial jurisdiction restricted to states parties, among Federal Republic of Yugoslavia is not included.

The UN system has been designed and has been built for the protection of universal rights, rights of people of the UN, which accidentally are organized territorially into States. This is why the UN recognizes, for example, the existence of states without territory (i.e. Palestinian) and the right to protection of minorities (not recognized by most people in the territories in which they live). Thus, the territory element as a state assumption is overcome in international law, which is supported within the UN system itself and the NATO action in Kosovo (Reisman, 2000, 3-18).

If there were threats to international peace and security in Yugoslav territory, threats that did not exclude the peace and security of NATO member states, it is to admit reasonable NATO's legitimacy in action, even by the body to which the Charter assigns primarily the

recognition of threat to international peace and security and determining the use of force, the Security Council at any time, condemned the NATO attacks.

As regards the applicability of Article 51 to the internal conflicts, we are confronted again with the question of defining aggression, armed conflict or war. At this point, there is no question about the justice of war, for the exception of Article 51 which refers only to self-defense, a principle that will be considered retrospectively, only after the force measurement taken by one state against another. The monopoly of the interpretation of the measure lies only with UN Security Council.

If we admit the existence of acts from attacks aggression to international peace and security qualified by their extraterritorial effects, regardless of their geographic limitation to the territory of a single State; if we admit that internal conflicts such as those found in Federal Republic of Yugoslavia produce undesirable effects that reaches neighboring states carried by thousands of war refugees, we can conclude that the internal conflicts, treated as its extraterritorial effects under the aegis of international law, should be considered if not as acts of aggression, then as acts offensive to international peace and security, thus deserving preventive protection for part of any UN member pending Security Council action. Thus, the discussion about the quality of the UN's role in Federal Republic of of Yugoslavia, in the field of applicability of the Charter to acts committed in its territory, as to the application of Article 51 to weigh the effects of internal conflicts over territories adjacent states is justified (Roth, 2004, 51).

Another issue to be considered from the perspective of the applicability of Article 51 to internal conflicts is the humanitarian implications of the conflicts, and also the derogation of the principle of non-intervention in the internal affairs of states. There are international precedents, endorsed by the Security Council itself, to intervene in the internal affairs of states, particularly in internal conflicts whose effects threaten international peace and security: humanitarian interventions in Bosnia and Herzegovina in 1991 and Somalia in 1992.

The humanitarian situation in Kosovo had been calling the attention of the Security Council since at least early 1998 when the Council itself issued Resolution 1160[42] (Holzgrefe, 2008, 32) demanding an urgent political solution by the Federal Republic of Yugoslavia regarding the situation in Kosovo and clashes between Serbian police and Kosovo-Albanians. It also called on member states and international security organizations to act in accordance with the resolution only by refraining from any interference in the territorial integrity of the Federal Republic of Yugoslavia, which should pay attention to the safety principles of the OSCE (which had been suspended since 1992), to the principles of the Helsinki Act drawn up at the end of the Conference on Security and Cooperation in Europe [CSCE] in 1975 and mainly to the principles of the UN Charter.

However, the Federal Republic of Yugoslavia did not promote a political arrangement that put end to hostilities in the region of Kosovo; on the contrary, international observers, such as the OSCE (Kosovo Verification Mission), indicating an increase in conflicts and atrocities committed by both sides (Serbian and Kosovar-Albanian) Kosovo. Then came a plethora of Resolutions, namely 1203 (1998), 1239 (1999) and 1244 (1999), the latter two already under NATO attacks, all recognizing the grave humanitarian situation in Kosovo and condemning acts of terrorism in violation of human rights, at last, expressly recognizing a threatening situation to international peace and security. With special attention to Resolution 1244,[43] the Security Council authorized Member States and international organizations of major safety to establish an international security force in Kosovo, referring expressly to the action of NATO (Rytter, 2001, 120).

It is to be noted that the references in all these resolutions of the Security Council were considered in meetings of foreign ministers of the G8 (Canada, France, Germany, Italy, Japan, Russia, the United Kingdom and Northern Ireland and the United States) where the principles emerged to be followed by a political agreement for a final solution of humanitarian problems in the Federal Republic of Yugoslavia.

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[42] This resolution adopted 31st March 1998 called upon the parties to take steps to achieve a peaceful solution, and referred to OSCE and Contact Group readiness to facilitate dialogue. Arms embargo on Kosovo and the FRY was imposed under Chapter VII.

[43] This resolution adopted on 10th June 1999 authorized NATO to secure and enforce the withdrawal of Federal Republic of Yugoslavia forces from Kosovo and established UNMIK.

The humanitarian situation in Kosovo was evident and the Security Council has not taken effective measures to curb the violence committed by both sides of the conflict, contradictory to the blatant threat to international peace and security recognized in Resolution 1244 (Rytter, 2001, 120). Finally, one cannot say that NATO struck duties and responsibilities assigned by the Charter to the Security Council, as it stipulates in the last part of Article 51 of the Charter. Since the start of Operation Allied Force, in March 24, 1999, NATO took care to inform the Security Council about the situation and the performance of KFOR (Kosovo Force), until the said Resolution 1244 (1999) passed by the Security Council which requires NATO to remain on Yugoslav territory to ensure the maintenance of international peace and security.

2.4.3 Humanitarian Intervention in Rwanda

2.4.3.1 Historical Background

Ethnic strain in Rwanda is just the same old thing new. There have dependably been contradictions between the larger part Hutus and minority Tutsis, however the ill will between them has become significantly since the pilgrim period. By the mid- 1990s, Rwanda, a little nation with an overwhelmingly farming economy, had one of the most elevated populace densities in Africa. Around 85 percent of its populace is Hutu; the rest is Tutsi, alongside a little number of Twa, a Pygmy gathering who were the first occupants of Rwanda. Some portion of German East Africa from 1894 to 1918, Rwanda went under the League of Nations order of Belgium after World War I, alongside neighboring Burundi. Rwanda's provincial period, amid which the decision Belgians supported the minority Tutsis over the Hutus, exacerbated the propensity of the few to persecute the numerous, making a legacy of strain that blasted into viciousness even before Rwanda picked up its freedom. A Hutu insurgency in 1959 constrained upwards of 300,000 Tutsis to escape the nation, making them a considerably littler minority. By mid-1961, successful Hutus had constrained Rwanda's Tutsi ruler into outcast and proclaimed the nation a republic. After a U.N. submission that same year, Belgium formally conceded autonomy to Rwanda in July 1962. On April 6, 1994, a plane conveying Habyarimana and Burundi's leader Cyprien Ntaryamira was shot down over Kigali, leaving no survivors. Within an hour of the plane crash, the Presidential Guard together with individuals from the Rwandan military (FAR) and Hutu local army gatherings known as the Interahamwe and Impuzamugambi set up detours and blockades and started

butchering Tutsis and moderate Hutus with exemption. Among the first casualties of the genocide were the moderate Hutu Prime Minister Agathe Uwilingiyimana and her 10 Belgian bodyguards, slaughtered on April 7. This brutality made a political vacuum, into which a break legislature of fanatic Hutu Power pioneers from the military high charge ventured on April 9.

The mass killings in Rwanda rapidly spread from Kigali to whatever is left of the nation, with nearly 800,000 individuals butchered throughout the following three months. Amid this period, nearby authorities and government-supported radio stations approached common Rwandan regular folks to kill their neighbors. In the interim period, the RPF continued battling, and common war seethed nearby the genocide. By ahead of schedule July, RPF powers had picked up control over the greater part of nation, including Kigali. Accordingly, more than 2 million individuals, almost all Hutus, fled Rwanda, jamming into displaced person camps in the Congo (then called Zaire) and other neighboring nations.

After three years of negotiations, the opponents to the Rwandan civil war signed the Arusha Agreement,[44] thus putting an end to the conflict that started in August 1990. Thus, a transitional government was installed, in which the RPF took part, although there was a fierce opposition of extremist Hutus. The UN decided to send a mission to try to minimize the conflicts that were occurring in the region. This mission was named the UN Assistance Mission for Rwanda (UNAMIR) and was sent to Rwanda in October 1993, in order to promote peace, monitoring the fragile ceasefire as well as monitor the demilitarization process. However, the Rwandan presidents - Habyarimana - and Burundi - Ntaryamira - died in a plane accident in April 1994, when returning from talks about making arrangements for the execution of Arusha Agreement, which led to violence on a political and ethnic scale. The deaths of the State of Rwanda and Burundi Heads on 6 April 1994, in an accident apparently caused, would unleash a wave of ethnically motivated killings, political and economic indirectly, in which die over eight hundred thousand people, while three million would move internally or to neighboring countries. Tutsi Rwandan population about one million survived less than two hundred thousand. The Rwandan situation has become a catastrophe, as they have become targets the Prime Minister, cabinet ministers and UNAMIR. In this context,

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[44] The Arusha Accords were a set of five accords (or protocols) signed in Arusha, Tanzania on August 4, 1993, by the government of Rwanda and the rebel Rwandan Patriotic Front (RPF), under mediation, to end a three-year Rwandan Civil War.

"elements of the government forces, the presidential guard and the young Hutu militia - the Interahamwe - were free to kill Tutsis and moderate Hutus leaders" (Stromseth, 2003, 232).

This dispute has become something without limits, causing half a million Tutsis and moderate Hutus killed in genocidal practices because hatred problems with ethnic connotations. Three months after the beginning of this wave of destruction and violation of human rights, the number of dead victims came to exceed one million. A new government that has taken place in Rwanda in April did not stop the genocide practices. Only on May 17, 1994 the UN Security Council recognized that the problem of Rwandan region constituted a threat to international peace and security and consequently imposed embargo on armaments. Western countries were inert to the political and social situation in Rwanda and, only France proposed to implement an intervention with humanitarian, after authorization of the UN.

2.4.3.2 Reason of Failure

The process of humanitarian intervention in Rwanda was considered a failure. First, the case of Rwanda would demonstrate the political boundaries of perspective to resort to the armed force for humanitarian purposes and also for being a threat to international peace and security and that the actions taken to end the slaughter should be based in Chapter VII of the UN Charter. Years later, an Independent Commission, established by the UN Secretary General concluded that the UN response had been a "resounding failure",[45] summing up the lack of resources and political will of the member states to take the necessary commitment to prevent genocide.

Furthermore, the humanitarian intervention in Rwanda showed signs of lack of commitment to international humanitarian law. One can come to this conclusion from the moment that the Belgian troops, considered the largest contingent of UNAMIR and stronger, were removed and it hampered any reaction.

In the first days of the genocide, the military commander of UNAMIR head- Canadian Roméo Dallaire - ordered the expansion of the troops of the five thousand and new mandate to enforce a ceasefire. Kofi Annan, at the time held the position of UN Secretary-General contacted representatives of about a hundred different governments in order to achieve troops. However the result was unsuccessful. However, before the crisis that raged in Rwanda, the

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[45] Established as a response to Kofi Annan's inquiry in the failure of Rwanda.

UN Security Council decided to keep troops to the minimum and did not decide on intervention and limited humanitarian aid to the least (Teson, 2001, 55).

The decision was enough for the other African states, and especially the humanitarian agencies, criticized this position. In addition, the term genocide was avoided during discussions by the UN Security Council in order to avoid political and legal implications to member states, on the Convention on the Prevention and Punishment of the Crime of Genocide. However, decisions about humanitarian intervention in Rwanda were not accurate. Countries that might have participated more actively were left out because they did not feel accountable for the massacre. One example is the position of the US that found no moral or legal obligation to intervene. The US diplomacy noted that the intervention could only occur with the consent of the warring factions. Then came the Resolution 929[46] represented the legal basis for the intervention of France in Rwanda. It had ten votes in favor, one vote against and five abstentions by Brazil, China, New Zealand, Nigeria and Pakistan). The intervention, led by the French army could not exceed a period of two months.

2.4.4 Humanitarian Intervention in Iraq

2.4.4.1. Historical Background

The first time UN Security Council authorized the use of force to protect human rights was in Iraq. Shortly after the Gulf War, the Allies chose not to invade Iraq to depose Saddam Hussein, but encouraged the revolt of the Kurdish and Shiite minorities to do so. The Iraqi army at the time had no trouble crushing the opposition and, after the failed uprising, people began to flee en masse to the borders of Iran and Turkey in order to avoid reprisals. It is estimated that, in April 1991, about a million refugees were concentrated along this border. The extreme conditions of hunger and disease these individuals caused the reaction of Western countries, mainly because of the Kurdish insurgency was encouraged by the Allies, which made indirectly responsible for the outbreak of the conflict. Another factor of great importance for understanding the involvement of the West was the media's role in the formation of a domestic public opinion which stated that UN Security Council powers have become unsustainable.

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[46] This resolution was adopted on 22nd June 1994 authorizing Operation Turquoise led by France in order to intervene in Rwanda which turned out to be a resounding failure.

2.4.4.2 Problem of Legitimacy of Intervention

In this context, the agency approved one of its first resolutions intended to authorize the use of force for the protection of human rights. In Resolution 688,[47] UN Security Council was seriously concerned by the acts of repression perpetrated against the Iraqi civilian population in many locations in Iraq, mainly in the Kurdish village of areas, which generated a massive flow refugees and even across international borders, and threatened peace and security in the region. Further on, the resolution in question condemned all acts of repression committed against the Iraqi civilian population and demanded that Iraq put an immediate end to such acts and that a dialogue be established in order to ensure that the human rights and political rights of all Iraqi citizens. It was insisted that Iraq should give international humanitarian relief organizations immediate access to all those in need of assistance in its territory and make available to these organizations the necessary facilities for the provision of humanitarian assistance. Finally, it called on the UN Secretary General, who used all means necessary to address urgently the needs of refugees and the Iraqi population affected by the conflict and called upon States and humanitarian organizations to make efforts in the rescue work of the organization victims, under the demand that Iraq cooperate with the Secretary-General to achieve these goals. It is noticeable that Resolution 688 associated massive and systematic abuses of a state against the rights of their own nationals to the problems of international security and, therefore, signaled a change in the UN Security Council's role with regard to restrictions on domestic jurisdiction state in the face of international protection of human rights. France, Britain and the US, who had already signaled its intention to grant aid to the Kurdish population affected by the conflict, now, had, with the approval of the Resolution, legal support to promote the necessary help. The troops had the support of some other countries to transport food, clothes and medicines to the refugee population. In addition, humanitarian aid centers have been installed to allow the return of refugees Kurds in Turkey and Iran through humanitarian corridors to security zones, places where there was a ban on any military activity by the Iraqi government as well as a no-fly zone to monitor Iraq's compliance to compliance with the resolution. It is estimated that the operation allowed access to seven thousand tons of supplies for a total of a million and a half refugees. Note that, despite this, the action had initiated the activism of the Security Council in the humanitarian field. The resolution only asked permission for humanitarian agencies to aid

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[47] This resolution was adopted on 5th April 1991and it condemned the repression of the Iraqi civilian population, including a clause to protect Kurdish refugees on the Turkish border.

and, therefore, it cannot be considered strictly speaking a humanitarian intervention, since the use of force was authorized implicitly only.

2.4.4.3 Problems due to Intervention

Although the source functions and powers of the board reflect, in essence, the fears of the international community regarding the aggression by one state to another, today there are much more frequent threats related to clearly internal matters, which may, however, have regional impact or global, for example, Haiti and Sudan. Despite the partial repayment of sovereign powers to the interim government from that month, in accordance with the provisions of that resolution, the foreign military presence in Iraq will continue and we do not see an end to armed resistance. Multiply confrontations with Iraqi and foreign security forces; they proliferate attacks and established the practice of kidnappings of foreign civilian personnel in the country as a way to pressure the countries of nationality of the hostages to withdraw from Iraq.

At the same time, political divisions are stoked in the interior of ethnic and religious groups and between them. The internal differences to the Shiite wing are known, between this and the Sunni, as is known of the problems separating Arabs and Kurds. The current reality is the real threats to the territorial integrity of Iraq, and that, at first, mainly could be characterized as resistance to foreign forces at this stage of civil war won possible ingredients.

It is perhaps easier to understand the perspective of the Council than purely from the perspective of the Iraqi situation as it reflected the willingness of all members of the UN Security Council, to overcome the episode of military intervention, on the sidelines of the UN, and subsequent occupation of the country. Replaced previously expressed occupation logic by resigned acceptance of the presence of foreign forces, staked out the official end of the occupation and the limits of Iraqi sovereignty and the Council, the resumption of more multilateral forms of consensus building. It seems necessary to recognize, too, if it is more comprehensive than originally planned, it is hardly exhaustive, and leaves open questions such as the situation of prisoners of coalition forces in Iraq or the issue of UN Monitoring, Verification and Inspection Commission (UNMOVIC) mandates and the International Atomic Energy Agency (IAEA). Nor is the fulfillment of the resolution of the responsibilities

assumed by the former occupant's powers, in particular as regards compliance with the principles of international humanitarian law and accounting resources available in Iraq Development Fund, whose administration was entrusted to the coalition.

The internal situation is at best hazy. Ultimately, there is a risk that any effort by Iraq's stabilization produces lasting results. It is notoriously difficult to reconcile divergent positions and interests of the plurality of actors in civil society and the religious world Iraqis. A subtle balance will also have to be found to make feasible the concerted action of the triad UN-interim government - multinational force, without compromising the credibility of the first two. It should be added that the regional framework continues to give cause for serious concerns. Given the precarious security has not yet been possible to achieve, on the scale required, returns the UN to the ground.

2.4.5 Humanitarian Intervention in Afghanistan

2.4.5.1 Historical Background

The growing importance of this third arena of interests during the Clinton administration of the USA, as evidenced by the role of the military in the case of Bosnia and Herzegovina (1995) and Kosovo (1999), relates to the also growing assumption that this is a way to propagate Western constitutional democracy. In the post-Clinton period, this trend seemed to continue, but in a much more perverse way, that is, despite the humanitarian concerns could now be formally considered vital interests, the option for use of unilateral military intervention as a way to allegedly combat violations human rights, hide other objectives, as evidenced by the events that occurred most recently in Afghanistan (2001) and Iraq (2003). The flagship brand of successive US administrations has been the defense that the extension of the principles of constitutional democracy[48] and the market economy[49] had reduce the chances of another State threaten the American homeland and the promotion of economic well-being of the country - both being vital interests. According to this view, if the protection of these US interests involved the establishment of conditions in which supposedly representative democracy can flourish, it seemed logical that the EFFC, where human security

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[48]A system of government based on popular sovereignty in which structures, powers, and limits of government are set forth in a constitution.
[49] A market economy is an economy in which decisions regarding investment, production, and distribution are based on supply and demand, and prices of goods and services are determined in a free price system.

- freedom from fear of coercion - was absent, employ military forces is not merely an auxiliary or additional duty, shall imply or involve a significant military mission (Dorff, 1999, 62-81).

You can see, then, that the popularity of the above mentioned view, who feeds the purpose of consolidating - also making use of military force if necessary - a neoliberal global governance which, instead, is argued, in part, through the expansion of representative democracy.

The situation opened the door for future unilateral military external intervention, which eventually happens as the emblematic case of the bombing of Serbia by NATO in 1999. Here, some authors such as Habermas (1985), considered that military intervention may be read as an attempt to tame the existing state of nature in the relations between States in anticipation of the universal union of states, imagined by Emmanuel Kant[50] However, states acting outside the ambit of UN do so in a pattern of hegemony, therefore, the perception war in Kosovo outside of NATO is completely different from that inside the setup (Brock, 2006, 277).

Imbued with the logic of joint international ethics, Brock (2006, 277) argues that Western countries should avoid, with more effort, emptying the UN and ideas about their retirement, and that they must strengthen the legal analysis of the results political construction and maintenance of peace, both by governments and the International Organizations (Brock, 2006, 277). However, similar situations have emerged throughout the 2000s, as are the cited cases of Afghanistan and Iraq and more recent interventions occurred in Africa, particularly in Libya (2011) and Mali (2013). Focusing briefly in the first case, calls were made for external military intervention despite Resolution 1373[51] the UN Security Council had legitimized in retrospect, NATO's intervention in that country, under US leadership, following the attacks of 11 September 2001. Interestingly, this resolution was approved 16

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[50] Immanuel Kant is the central figure in modern philosophy. He synthesized early modern rationalism and empiricism, set the terms for much of nineteenth and twentieth century philosophy, and continues to exercise a significant influence today in metaphysics, epistemology, ethics, political philosophy, aesthetics, and other fields.

[51] Adopted on 28th September 2001, UN Security Council Resolution 1373 called for UN member states to work together to suppress terrorist financing, share intelligence on terrorism, monitor borders, and "implement...the relevant international conventions and protocols to combat terrorism".

days after the approval, by the same body of Resolution 1368,[52] which involved no to that legitimacy and focused on condemnation of the said attacks. This gave support to the fact that, early on, when NATO intervened in Afghanistan, UN was not against the position taken by NATO and the US - who would be acting in "self-defense" - adopting a contrary attitude, under preventive action, to combat and eliminate the al-Qaeda terrorist group, held responsible for the bombings.

Therefore critically reading the recent developments on the issue of self-defense, the idea that emerges is that the influence US has within UN has leads to her action considered as a right to use of force. It can be seen that the intervention of NATO on the Afghan state was given contrary to the saying the UN Charter that use of force is only acceptable from legitimate defense. Even after the UN accepted the intervention, it can be said that the use of NATO force in Afghanistan was not legitimate, because that is not secured by any law or the rights within the international arena. In the case of its legality, at first given, with no support from the UN, the situation was regarded as illegal, however, after its acceptance and support for intervention, the case is considered a president. With regards to the events that took place in Libya and Mali, they raise, from our point of view, two immediate readings.

Serving the interests of leading power, the United States, it appears that NATO, after the intervention in Afghanistan, consolidates the tendency to act out of their initial area of activity - strategic shift operated after the end of the Cold War - to intervene militarily in the country then led by Muammar Gaddafi (Varela, 2007, 1-16). Despite having based on the Resolution 1973,[53] the UN Security Council - which allows its member states to use military force in order to establish a no-fly zone in order to protect civilians targeted by attacks Libyan regime - such as the case of Afghanistan, we can add this foray into Libya on the list of unilateral military external intervention to the extent that the intervention was unlawful given that the intervening countries of NATO have made an interpretation extensive of the Resolution, going beyond the simple exclusion area, but carrying out massive air strikes, aimed at overthrowing the regime itself, which was not stipulated in the Council decision.

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[52] Adopted on 12th September 2001 expressed determination to combat threats to international peace and security caused by acts of terrorism and recognizing the right of individual and collective self-defense.
[53] Adopted on 17th March 2011, this resolution calls to "all necessary measures" to protect civilians in Libya from pro-Gaddafi forces.

2.4.5.2 Casualty and the Problem of Reconstruction

With all these institutional frameworks previously built, our main questions arise: what are called nation-building operations? And what are they for? The combination of failed states and terrorist groups whose association between Al Qaeda and the Taliban government in Afghanistan would be a test case to demonstrate the problems arising from the state decline, led many analysts and policymakers to argue that a better solution to this situation would be calls operations nation-building (Dobbins et al. 2003; Fukuyama, 2005; Bush, 2002, 189-222). However, what are these reconstructions of state? Are they different from post-conflict peace building operations proposed previously and peace building operations?

First of all, it is important to note a fundamental difference regarding the justification for the missions. During the 1990s, the speech sought to justify the peacekeeping operations was underpinned by the very idea of humanitarian intervention, which should be taken forward in countries where mass violations of human rights were taking place. However, when it came to nation-building, especially after the September 11, 2001, the rationale was more related to problems stemming from state failure. *Mutatis mutandis*, the decline of the state, would cause some countries fail to control refugee flows, illicit trafficking in drugs and arms, and can become havens for terrorist groups, creating a situation that could cause them to turn into possible targets for reconstruction. On one hand, it is possible to find similar diagnoses the problem, on the other, there is a unanimous definition of building is not easy to find. The various authors discussed in this article have different visions of tasks to be learned and even cases that can be considered genuine nation-building operations. The main consequence is a wide range of targets to be met and emphases varied on certain aspects of missions, leading some to emphasize again the importance of economic development, while others prefer to emphasize the importance of direct elections for key positions of countries on reconstruction. It is an important debate, which should always be under scrutiny, since, at this juncture; it is difficult to think of big hits. If we look at current operations in Iraq and Afghanistan, we note that both still are under considerable problems when the questions are of are stability and economic development, although both countries have already elected new leaders. In both countries, much remains to be done, and international assistance is indispensable.

Another point to be noted is a possible relationship between peacekeeping and nation-building with the formation of states. As noted earlier in this work, an important element in the political science seeks to investigate the process of state formation and variables which culminated in the emergence of this form of political organization. It is seen that ne effect, however, is that the interventions carried out on behalf of democratic exports and the development of a market economy, often leaves aside the internal dynamics of the country. Again, the case of Afghanistan is paradigmatic: the reconstruction led by the US, the main government posts, in addition to the governments of the provinces, were initially occupied by Tajiks and Uzbeks, major ethnic groups opposed to the Pashtun ethnic majority of the country and main source of human resources of the Taliban. According highlighted by Starr (2001, 28) all ministers, governors and members of the administrative staff were Tajiks originating from the Panjshir Valley, stronghold of the Northern Alliance. Thus, the acceptance of the new government was one of the hardest tasks of the operation, because much of the population was sub-resented the new division of powers. Therefore, being a very controversial topic, we believe that nation-building should continue under scrutiny not only academia, but also of the entire international community. Because, in today's terms and keeping in mind the conduct of operations in Afghanistan and Iraq, this type of intervention is far from presenting itself as the ideal tool for stabilizing states.

2.4.6 Humanitarian Intervention in Libya

2.4.6.1 Historical Background

Libya had found a place on the world stage in the mid-fifties, when large oil reserves were discovered in the region. In 1959, all major oil companies were already active in the country, generating significant growth of gross domestic product. Despite promising prospects, revenues from oil exploration were restricted to the elite, while the population, ravaged by drought desert climate, remained in critical condition. In this context it was that, on 1 September 1969, Muammar Gaddafi, then a young 27, took power through a coup and proclaimed the Arab Republic of Libya. Once in charge, Gaddafi closed all US and British military bases established a tight rein on the country's oil and took steps to nationalize foreign companies. The 70s and 80s were considered the golden period of Libya. In the 90s, the economy suffered some deterioration with the fall in oil prices and international sanctions,

initiated by the US and aggravated after the Lockerbie bombing[54] of 1988. After Gaddafi's reconciliation with the West and the opening of the oil sector at the beginning of the century, the economy resumed breath. However, the distribution of oil revenues kept elite concentrated in hands, compromising thus the development of the population.

In late 2010 and early 2011, protests waves in Middle East and North Africa were known as the Arab Spring. The uprising ousted from power the President of Tunisia, Zine El Abidine Ben Ali, and culminated in the resignation of Egyptian President Hosni Mubarak, who was in power for three decades. The protests also reached Saudi Arabia, Algeria, Bahrain, Yemen, Iraq, Jordan, Morocco, Mauritania, Oman, Syria and Sudan. These events generally were motivated by high unemployment, inflation, poor income distribution, state corruption, violations of human rights and state of emergency laws that freedom of expression and the exercise of democracy. The third country to be infected by the wave of demonstrations was Libya. Early in the conflict, the African Union (AU) has created a special commission to the Libyan conflict, led by South Africa, Mali, Mauritania, Congo and Uganda in order to find a peaceful solution. However, the effort of the AU was not taken into consideration. US, Britain, France and Italy rejected any and all attempts at peaceful mediation. The Chairperson of the AU Commission, Jean Ping, arrived several times to criticize publicly, in press conferences, the lack of interest of the United States and EU to find peaceful solutions to the conflict.

The first manifestation of the UN Security Council concerning the Libyan conflict took place on 26 February 2011. Through resolution 1970,[55] expressly condemned the violence, the use of force against civilians and serious human rights violations that were occurring in Libyan territory, also considered that the widespread and systematic attacks against the civilian population could be characterized as crimes against humanity. The peaceful initiatives were nevertheless again rejected. On March 17, 2011, without having sought alternative means for the settlement of the conflict, the UN Security Council, by Resolution 1973, led to a military intervention filed by the Member States in Libyan territory

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[54] Happened in 1998 when a Pan-American Flight 103, route London to New York exploded over Lockerbie Town, and was widely regarded assault on a symbol of the United States, with 189 of the victims being Americans, stood as the deadliest terrorist attack on American civilians until the attacks of September 11, 2001.

[55] Adopted on 26th February 2011, it condemned the use of lethal force by the government of Muammar Gaddafi against protesters participating in the Libyan Civil War, and imposed a series of international sanctions in response

under the pretext that they were taken all necessary measures to protect civilians and civilian populated areas under threat of attack in Libya, including Benghazi.

This resolution of the Security Council was proposed by France, Lebanon and the United Kingdom. Ten members of the Security Council voted in favor (South Africa, Bosnia and Herzegovina, Colombia, Gabon, Lebanon, Nigeria, Portugal, and the permanent members of the United States, France and the United Kingdom) and five abstained (Germany, Brazil and India, and the permanent members China and Russia). The Permanent Representative of Brazil to the UN, Ambassador Maria Luisa Viotti, clarified that Brazil's abstention should not be interpreted as an endorsement of the behavior of the Libyan authorities or as neglect of Libyan civilians, but that Brazil had chosen to abstain because she was not convinced that the use of force contemplated in Resolution 1973, would lead to the immediate end of violence and the protection of civilians, and feared that, on the contrary, such measures the unintended effects of exacerbating tensions on the ground and may make over harm than good to own civilians (Elshtain, 2001, 11). Two days after the adoption of Resolution 1973, the United States, United Kingdom, France, Italy and Canada began their military intervention in Libyan territory. On March 27, NATO assumed command of military actions; it is understood in this study, the two Resolutions adopted by the UN Security Council to protect civilians were distorted by NATO. The organization began a succession of unbridled attempts to assassinate Gaddafi and install in power the Provisional Government of Benghazi. The military intervention in Libya resulted in a complete failure from the point of view humanitarian assistance. After months of bombing, the interventionists were still surprised by the strength of the regime. Muammar Gaddafi remained in power; the Libyans had not risen up against him and were NATO member countries that fought each other.

2.4.6.2 Result of Intervention

The real facts, however, were not always clear. As much as the international media has reported conflict in Libya as a result of the Arab Sprin'', some analyzed the events from another point of view. Some believed that the French began to actively plan for regime change in Libya on October 21, 2010, when Nuri Mesmar, protocol chief and right hand of Gaddafi, arrived in Paris (Evans, 2007, 15). The trip had as a pretext an alleged surgery, but according to sources of the Italian intelligence system, Mesmar not been to doctors, all his contacts were with agents of the French secret service and then close advisers of President

Nicolas Sarkozy. According to a letter published by the French newspaper *Libération*, the National Transitional Council (NTC), the body that brings together the Libyan insurgency, promised to France 35% of new oil contracts in Libya in exchange for their support for the campaign against Gaddafi. On November 16, less than a month later, Mesmar approved the strategy of introducing troops in Libya, disguised as a delegation of businessmen. Two days later, a plane landed in Benghazi, taking soldiers and other agents who had gathered there with Libyan military commanders. Among those who agreed, Colonel Gehan Abdallah was that when the time, led the armed rebellion. One of the reasons that gave rise to the intervention in Libya was the insubordination of the Libyan government to abide by the arrangements of the strategic security of NATO member states to control the Mediterranean basin and the Middle East, plus the permanent opposition to Gaddafi AFRICOM (US Africa Command), creating a   dangerous obstacle to NATO's hegemony in the region (Evans, 2007, 15).

Another factor that appeared to contribute to the outrage of Libya to Western economic and strategic interests was the fact that Gaddafi refused to privatize their oil wells, given that despite the Western oil companies are already established in the country, such a stance prevented them to exercise effective control over oil. The discomfort grew even more when Gaddafi released the oil exploration for foreign companies, which meant opening a gateway to the expansion of China, threatening the US strategic security. But NATO invasion of interests in Libya were beyond petroleum. The incentives and the country's resources supplies for creating the three main pan-African institutions, namely the African Monetary Fund, the African Investment Bank and the AU, added to the investment initiatives in African countries in the telecommunications, tourism, some manufacturers and distribution of gas and oil constituted a threat to the monopoly of the Bretton Woods institutions and the political influence of NATO countries on Africa. According to Mamadou Alpha Diallo,[56] this was not the first time that there was a western intervention under UN auspices in Africa, which are always directed against African leaders engaged in promoting and defending interests and the development of the continent? Since the report of the Commission on Intervention and State Sovereignty (ICISS) 2001, the UN has occasionally invoking the Responsibility to Protect - R2P as a principle operating to support humanitarian interventions. Resolution 1973 was drafted under the pretext of R2P to legalize the desire of NATO to invade Libya and overthrow the government of Gaddafi, and not with the noble aim of minimizing damage to

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[56] Director-General of the High Institute of Science Education of Guinea - ISSEG

Libyan civilians (Farer, 2003, 67). It is also known that the violent repression against the civilian demonstration on February 15 was not the first. The last major event of violent repression against protesters took place in Libya in 2006. Like many North African and Middle Eastern dictators, Gaddafi violently repressed the uprising of 2006, some injured and arrested others. There were no mass killings and, at that time, the Gaddafi action was tacitly supported -especially the support he received from the US - as a legitimate response to the evil influence of al-Qaeda (Farer, 2003, 67). The consequence was that, in the first months, the military attack on Libya has already resulted in large transfers of capital to the economy of the invading countries. The money of the Libyan people became directly confiscated under the custody of Libyan public institutions, to be consumed in his own defense, including military equipment expenses and logistical support to the Libyan army. A few months after the start of the conflict, competition for attractive contracts that Libya promised reconstruction has started. As well as Italy, England and the United States, France hastened to hold a series of business with the rebels that Gaddafi took power. On September 1, 2011, it took place in the French capital an international conference sixty countries and international organizations to discuss relief and reconstruction of Libya On 17 September 2011, United Nations Support Mission in Libya (UNSMIL was made for three months to work in the reconstruction of the Libyan state in the preparation of elections and the drafting of a new constitution. On October 20, 2011, Muammar Gaddafi was captured and killed near his hometown of Sirte, the rebels of the National Council of Transition (CTN). Seven days after the death of the Libyan ruler, the Security Council unanimously adopted Resolution 2016,[57] ordering the termination of the use of force mandate in Libya and the end of the no-fly zone, implemented by Resolution 1973, at midnight of October 31, 2011. However, on March 12, 2012, the Security Council Resolution 2040[58] extended the permanence of UNSMIL for another year to help the Libyan authorities to manage a transition to democracy with the promotion of the rule of law and protection human rights (Farer, 2003, 55).

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[57] Adopted on 27th October 2011, the resolution set a date of termination for the provisions of Security Council Resolution 1973 which allowed states to undertake all necessary measures to protect civilians and which formed the legal basis for military intervention by a number of foreign states.
[58] Adopted on 12th March 2012.

2.4.7 Non-Intervention in Syria

The beginning of the revolution in Syria, 15 March 2011, was different. Initially, there were large manifestations in the streets, quickly reprimanded. The government of President Bashar Al Assad is used to contain demonstrators, creating a stressful environment internal and external. With the arrival of forces, rebels in the capital Damascus, the conflicts between government and opposition intensified. Initially the opposition claimed more democratic opening, causing Assad decreed the end of the state of emergency and approval of a new constitution. However, opposition changed his speech by asking directly to Assad's departure from power. Assad made clear its position regarding the resignation, he said: "I am not a puppet. I'm not made for Westerners tell me that I must go to the West or another country. I am a Syrian. I was made in Syria and to live and die in Syria." (Franck, 2003, 230) The Syrian case becomes more complex when treated in the sphere of the UN Security Council. If, on one hand, US, France and Great Britain support a humanitarian intervention on the other, Russia and China preach non-interference foreign, mainly due to the recent Libyan case. In order to do so, the Security Council has a difficult task to be addressed. The government Russia has made it clear that will not allow in any circumstances, external action in Syria. Like this as stated by the Foreign Minister Russian Foreign Sergey Lavrov: "If anyone has the intention to use force at any price I heard requests to send Arab troops to Syria - We can hardly prevent, but will not receive any Security Council order" (Franck, 2003, 230).

The other three permanent members -US Britain and France- repeatedly tried, through union with rotating members of the Security Council, proposing a resolution to Syria without success. According to American opinion, the Russian position, would be contributing to the civil war in Syria. The analysis of the speeches of representatives of the governments involved, showed that the existing power play disrupts the negotiations for both parties. US Secretary of State, Hillary Clinton stated: "Do not just come to a meeting of the Friends of Syria The only way to get results is that every country represented here do Russia and China understand that there is a price to pay" (Gibbs, 2009, 32). US president, Barack Obama, also positioned with respect to the Syrian situation, mainly due to the protests in front of the US embassy in Damascus. Obama said in an interview that we are seeing President Assad lose

legitimacy in front of his people. He added: "He missed opportunity after opportunity to present an agenda of genuine reforms. And that's why we have worked internationally to make sure we keep the pressure up high" (Glennon, 2003, 32). In contrast, both Russia and China maintained its position against any foreign interference in Syria. Russia contributes in his own way when brought to negotiate on its territory representatives of the opposition and the government. For Russia, the negotiations should result in a negotiated transition of the current government to a pluralistic and democratic government that is represented by the will of the Syrian people.

For the Russian Foreign Minister, Sergey Lavrov, Russia is in favor of an immediate ceasefire and coordinated between all parties to the conflict, with impartial international monitoring, and access of humanitarian aid to civilians and the beginning of a dialogue between the Syrian parties without conditions previous (Glennon, 2003, 32).

In another recent attempt to negotiate the Syrian conflict, it was given the task to Kofi Annan, former UN Secretary-General to mediate a peaceful transition and dialogue between government and opposition. The choice of Annan was due to his negotiation ability and years of experience as General Secretary. Additionally Secretary General, held positions as Special Representative of the Secretary General in the former Yugoslavia and the Special Envoy of the (NATO). Before he perform these functions, Annan had served the UN in other posts and devoted more than 30 years of his life to the UN working in places as diverse as Addis Ababa, Cairo, Geneva, Egypt and New York. Therefore it was not a political or representative of a Security Council member state, but a highly trained person that goes beyond the particular interests of Security Council members. Not even the UN was as easy to negotiate a solution to the conflict through a multitude of outside interference. Koffi Annan met with representatives of both parties and sought support of both the bloc led by the United States, Britain   and   France,   like   Russia   and   China   block.

However, in the current scenario, after the bombing in France which was carried out by ISIS as a series of coordinated attacks in Paris which left more than 140 killed and the subsequent rise of anti-Muslim sentiments in the UK and US, decisions were made by France and UK to intervene in Syria militarily and end the regime of Bashar-Al-Assad (Dictator of Syria) and also eliminate the ISIS. Similarly Russia has also decided to intervene. All these countries have no authorization from UN. However, all these efforts have still not yet yielded

any results as Bashar-Al-Assad is still in power and the conflict has led to a massive refugee crisis and mass humanitarian massacre. It seems the only answer to this problem is a unified intervention which is without any political agenda of any state and is only focused on freeing the Syrians.

CHAPTER THREE: PROPOSED SOLUTIONS FOR THE DOCTRINE OF HUMANITARIAN INTERVENTION

In the post-World War II period the precept of humanitarian intervention has been the object of extraordinary level headed discussion what's more, of different positions with respect to Europe and the United States. At the heart of this open deliberation lies the pressure between two basic standards of worldwide law: from one perspective, the preclusion of the sovereignty, and, the commitment to regard and secure human rights, on the other. The appearing disappointment of the universal group to enough react to these fiascos has prompted the definition of the idea that states have an obligation to ensure the fundamental human privileges of their own individuals, and that the UN has an obligation to venture in when the state neglects to do as such.

This second perspective is not all that new as regularly kept up. It extends and brings under another mark the old thought that the UN, aggregately or through the activity of individual states, might persuasively intervene inside of the sovereign circle of different states, which are unwilling or not able to stop helpful disasters including mass homicide, starvation and wrongdoings against humankind (Boisson de Chazournes and Condorelli 2006). The most recent decade, after the end of the Cold War, has shown that change of the UN utilization of power principles is gravely required. Under existing UN Charter principles, countries might just utilize power in light of furnished animosity by another country or when approved by the Security Council. These standards were built up when the essential risk to global peace and security emerged from huge, motorized fighting between cutting edge country expresses that executed millions. Dangers to worldwide peace and security six decades later are entirely distinctive. Current utilization of power rules put a legitimate snag before endeavors to utilize power to mediate in the region of individual countries to go up against these new dangers.

Normally, the UN must give intervene whenever there is a threat to peace to end such dangers to global peace and security. The intervention in Libya in 2011 and, by complexity, the delayed idleness of the universal group versus the Syrian emergency, have resuscitated the level headed discussion on the inquiry humanitarian intervention is getting to be a norm or rule of global law, and specifically, on the off chance that it is developing into a standard of standard worldwide law as an aftereffect of state practice and *opinio juris*. The

disappointment of the global group to react to the outrages happening in Syria has hosed a portion of the early eagerness aroused by the approved intervention in Libya. It has re-opened genuine questions about the tolerability and pit falls about the utilization of military power for humanitarian intervention. Therefore this chapter will present reforms based on the findings of this thesis that intervention is legitimate but it is biased due to the inability of UN to get states to intervene without their own ulterior motives

3.1 Separate Army of the UN

The scope of international security is now more comprehensive than just military. Two issues - equity and armed conflict - seem stationed; the first, immediate socioeconomic inspiration and the second, to clear military expression. Equity refers to the root causes of conflict, often socio-economic nature; and the conflict relates to the consequences of inattention to these causes, by above all the major powers. A third and crucial dimension is that of international cooperation in a broad and positive direction. In addition to its intrinsic benefits, cooperation is the instrument par excellence for the development of friendly relations among nations, which is also a fundamental concern.

The very preamble of the Charter states that to prevent war. Peace, in this view, should be the normal state of the international system; the tension, hostility and armed conflict would be anomalies. However, since 1945 the world experienced continued nuclear threat and facing conflicts in all regions. At this stage, the immediate nuclear terror has been drastically mitigated, but the weapons to which they are still superior in number and quality, the arsenals of 1968, when the Treaty on the Non-Proliferation of Nuclear Weapons[59] was signed. At the same time, a growing number of states, endowed with nuclear weapons or programs for both, but not recognized by the Non-Proliferation of Nuclear Weapons.

The Charter distinguishes it contains explicitly and simultaneously, a statement of intent in its preamble and the purposes and principles in Articles 1 and 2 as well as in the body of other articles, a complex mechanism that sets the standards its structure through major organs and mandates and operating rules. The UN act as intergovernmental form of mediation or intervention in critical situations - highly conflictive - as well as the construction

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[59] The NPT is a landmark international treaty signed in 1968 and has objective to prevent the spread of nuclear weapons and weapons technology, to promote cooperation in the peaceful uses of nuclear energy and to further the goal of achieving nuclear disarmament and general and complete disarmament.

vector of an international order based on free consent and therefore more democratic and compatible with a durable peace and cooperation between nations. They are unequivocal political legitimacy of the functions performed by the world body, these two aspects. In these situations, UN presence is embodied in the operation of the collective security mechanism, primarily through the Security Council. Its core instruments are the peaceful methods of disputes, contained in Chapter VI of the Charter, and applying topical coercive measures.

As a legal and political conception, the multilateral mechanism of peace and security maintenance aims to become more orderly - and therefore more predictable and safe - international life. It organizes the community of states and seeks to harmonize their actions, resolve tensions and controversies deter threats and armed aggression. Ideally, it provides the policy framework that facilitates global treatment of both perennial challenges - the fight against poverty and human rights -as the latest, for example, so-called "new threats" of terrorism and HIV-AIDS, with complex roots that require rapid and effective response.

The end of the Cold War created new opportunities for institutional progress and the events in Iraq, the Council highlighted the urgency of these changes. Not affirmed, however, that UN necessarily anticipates the lines of a future world government. It would be rash to do so. Many analysts, sign up, consider unsatisfactory, either because they see a global governance deficit that the UN does not meet, either because they believe it is impossible such governance, as long as the known strategic, political and economic asymmetries.

The analysis done above over the interventions performed establishes one thing – that the internal interests of the intervening states, almost over precede the intention to stop humanitarian crises. Also, it leads to more destruction than good in most cases. Therefore one of the solutions could be that the UN has its own separate army on the lines of NATO. This may seem as a bit utopical on the onset, however, it merits a discussion on it's probability. The UN ought to have its own standing armed force. It ought to be contained by a percent of troops from every part nation. Preparing could be an aftereffect of consolidated armed force strategies and warriors would need to battle in their nations' armed force before joining UN strengths. This would permit the UN to have even more a brought together way to deal with things. The purpose of UN is to keep the peace, however the truth of the matter is with no military it has little spine regarding physical vicinity. When you're attempting to restore

lawfulness to a country you should be upheld by a military to make your position clear to local people.

The UN concentrates on volunteers from third world and here and there first world countries. The possibility of getting a genuinely extraordinary battling power fit for taking care of the mission is significantly differed. What is required is a volunteer power of troops from all around the globe to join the UNM-United Nations Military as opposed to joining a national military. The UN can shape its own preparation program, its own particular military, its own polices, and so forth. The UN can utilize its subsidizing to supply this military and utilize its energy to convey equity to countries who overstep the worldwide law. It can permit countries to no more need to send whole military from distinctive nations into danger's path, yet rather send a solitary monstrous furnished military with the UN logo on it to restore peace.

However, this is met with criticisms of UN being a peace-keeping body and it should not have such an army in the first place. Regardless of some dynamic incremental change in global standards of intervention, an essential issue stays in that the UN is still an association which speaks to expresses whose interests are regularly not amicable, and whose force, even inside of the UN, is unequal. There are other imperative boundaries to the foundation of a viable U.N. armed force within a reasonable time-frame: who will pay? How will the operation be conducted? Lack of logistic support seems to be another problem. Restricted assets surely remain a genuine hindrance to the foundation of a standing U.N. armed force.

Is a Standing U.N. Armed force Possible? lose to 10,000 troops could require upwards of 30,000 support staff. However, regardless of the possibility that the UN had the majority of the assets of a noteworthy superpower, it would even now have genuine challenges mediating adequately for purposes of peace requirement, particularly in instances of ethnic clash and common strife. It is valuable to analyze three important criteria in evaluating these troubles: the nature of intervention; the result of intervention, i.e., the degree to which it succeeds in the particular instance of intervening as well as in influencing, through notoriety and prevention, other potential territories of inconvenience; and the longitudinal adequacy of intervention, i.e., the degree to which the achievement gives a long haul answer for the issue confronted. It does also seem logistically impossible as the bias will always be there and it will lead to a funding error as UN survives on the funding of the veto members, primarily.

However, I suggest that UN can generate funds on its agenda for intervention and when the time comes for intervening, as all member states have a responsibility to restore international peace and order, can be asked to intervene and UN can fund, therefore keeping the bias and monetary greed to the minimum. It seems idealistic at the front, but solutions need to be presented as humanitarian intervention is important and it should not be shunned away, simply due to the political myriad.

3.2 Restructuring of the UN Security Council

Another reform that is suggested in this study is that for restructuring of UN. It is imperative as in the previous section we had established that UN is logistically incapable of holding its own intervention and is very reliant on states to do the process which has been more harmful than helpful. The current standing rules of UN are that Security Council decisions, in all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, one who is party to a dispute shall abstain from voting. So that the UN Security Council can make a decision a double majority is required. 2/3 of the state's vote positively and that among these positive votes or abstentions is absolutely necessary that the five permanent members are positive. So we give up what we call the unanimity rule that grants to each of the five permanent members the right of veto.

Next, Viotti (2009, 92) shows, an appropriate summary of the arguments of proponents and opponents of such a mechanism. The critics argue that the measure is unfair, undemocratic and aimed at undermining the Council's ability to perform its core responsibilities. Those who justify consider that the principle of unanimity among the permanent members is a key element of the UN conception; it would be unrealistic to suppose that the Organization could act against the will of the great powers (Henkin, 1999, 825).

One of the problems that can be checked with the maintenance of this rule is that the permanent member countries, in most cases, are used the veto in favor of private interests, beside this arising weakness of the enormous power granted to frame members States Permanent Security Council, is quoted also a recurring merit emptying its meetings, as in not rare occasions, held previous meetings between its members, in which the real debate occurs and where decisions are, in fact, taken. Briefly, the scheme is in the US, France and the

United Kingdom to make use of previous meetings, forming the P-3. After this first step, the three countries refer to Russia, with the formation of the P-4. Then completes the process, the meeting with the last permanent member, China, and only then, in the final stage, occur expanding the debate to the other members - non-permanent- Council. Those presented above practices end up even foster more doubts about the legitimacy of the measures adopted by the agency, that the abuse of the veto power and the use of informal consultations, feeds of exceedingly, the confidence crisis now facing the UN in particular with regard to the work of the Council. What we are allowed to witness is simply a game of shadows where the rhetoric is confronted with demagoguery, since the participants do not represent the UN, but the interests of their respective states.

It meets at the outset to clarify that the use of these informal consultations is not illegal, as the Security Council has complete freedom to set up its working procedure, in accordance with sculpted by Article 30, however, with such a stance, transparency required of an organ as important for the international community, remains hampered, since the content and rationale of the acts issued by the UN's decision-making center does not pass by the organization itself, leaving therefore the previously elaborated agreements only by its permanent members.

The above questions highlight the need for an overhaul in the methods of the UN Security Council, aiming to such a stance away any doubts tending to cast doubt on its performance in several areas. It is noteworthy, however, that in place of reforms, the Charter of San Francisco,[60] in spite of contemplating in its core provisions on the amendments and the revision of its text (articles 108 and 109), has proved almost untouchable, as far respect to major changes, and in this sense only small amplitude changes were adopted, such as, e.g., the change in 1963 the number of non-permanent members from eleven to fifteen - in accordance with Article 23 of the Charter - which in reality did not cause greater impact of changes in the decision of the Security Council universe.

Especially after the episode of the second invasion of Iraq by captained coalition by the United States in March of 2003, and with the rise of so-called international terrorism, from the events of the 11 September 2001, Security Council Security entered permanently on the agenda of discussions of the international community, that because the US military action

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[60] Signed on 26th June 1945 as a constituent treaty to the UN and is one of the constitutional texts for ICJ.

defied the UN's authority and its collective security system, undermining its basic foundations. The UN was conceived in the post-World War II, to maintain international peace and security after its horrors, and Article 2 of its Charter, is anchored in a collective security system, which its member states give up strength resource with the mutual protection obligations in cases of aggression.

The use of force would therefore be with the Charter of San Francisco, a licensed feature only in extreme cases, however, always, through its Security Council decision. However, as is well observed in the second invasion of Iraq, the absence of such authorization finally led to questions about their obligation, leading the UN to a credibility crisis unprecedented in its history. In a different light began a series of questions about the true organization's capacity to maintain peace and international security, since initially with the terrorist attacks in the US, and later with the US response is not supported by its Security Council nothing was done to punish or terrorists, not the United States.

In December 2004, the group presented the results of their work through the report of the General Assembly A / 59/565[61] that addressed the Security Council reform, highlighting the discussion about the authorization of the use of force by the UNO decision-making body (Jones, 1995, 227). The report sets out, in its third part, one of the central issues, and collective security and the use of force, i.e., Chapter VII of the Charter. By admitting the use of force by the Council, the Panel rejects discretion and recommends respect the basic criteria of legitimacy for the authorization or endorsement of its use.

At this rate, the criteria established by the Panel, in order to overcome the high subjectivity of the decision-making center in the use of force materials, is to go through an analysis of the seriousness of the threat, the correct way, the exhaustion of all non-military options, proportionality of means, the duration of action and evaluation of its consequences. Regarding the enlargement of the Security Council, the Panel considered it a necessity, with the recognition that the decision-making process should rather incorporate more representative countries with special attention to those in development (Jones, 1995, 227). Collated by the above lines, evidenced left the group's willingness to change the Security Council supporting pillars, however, the problem was how to proceed to achieve that intent.

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[61] Report of the High-level Panel on Threats, Challenges and Change on "A more secure world: our shared responsibility" in December 2004.

The Panel took the Secretary-General two positions, which very clearly reflected the lack of consensus on a single proposal for reform. In short, the model projects the creation of six permanent seats without veto, and three non-permanent seats, elected for a term of two years. And the model B does not create permanent seats, but establishes a new category of eight members with renewable four-year term and one member with two-year term, not renewable (Jones, 1995, 227).

The two indicative issued by the panel reflected the desire of some States, meeting in groups, through its own meetings, formulated each, his reform proposal regarding the expansion of the Security Council. Thus, the G-4" formed by Brazil, India, Germany and Japan, presented a proposal seeking to create six permanent seats and four non-permanent, and the right of veto for new permanent would only be discussed after fifteen years of retirement (Menezes, 2009, 243).

African countries through African Group, presented demonstration supporting the creation of permanent and non-permanent, and the new permanent members have veto power (Menezes, 2009, 243). The other group was called United for Consensus, made up of twelve countries, especially Italy, Spain, Pakistan, Republic of Korea, Mexico and Argentina, in clear opposition previous proposals, only support the creation of non-permanent seats, rejecting any expansion of the permanent members. (Menezes, 2009, 243) These founded the "Uniting for Consensus" (UFC), composed of countries, and mostly divided regional rivalry with the postulant's permanent seat. This is the case of Argentina and Mexico (competing with Brazil in Latin America) Pakistan and Republic of Korea (the first with India, and the second with Japan, Asia), Spain and Italy (with Germany, in Europe). Other UFC without regional ambitions properly, prefer the status in order to prevent the emergence of "leaders" regional which, in his view, could limit the realization of its goals in their respective areas or subareas.

These countries, which even would be able to claim to be rival of candidates and would-be candidates, reject the granting of new permanent seats for a dubious argument would amount to giving "a privilege" to a few (thereby become, conscious or not, defenders of the status quo and preserving this privilege only for the current five permanent members). The content of the controversy mainly brought by jarring proposal of the third group, projects

around the expansion of the Security Council were not brought to a vote at any time, which is noteworthy, noted the immense difficulty to discuss the restructuring of a one who is rooted in purely political criteria.

3.3 Regional Veto - Humanitarian Intervention in a Particular State

It must be clear that this is not inertia of the international community to the front inner reality of the countries, but a minimum supranational law, exercised through a polycentric regionalization of international law. This framework, to respect the domestic law of each country would avoid a kind of revolt of the peripheral countries, since they would own their space and the right to their insured peculiarities (Zolo, 2002, 217). Anderson Teixeira goes beyond polycentric regionalization idea proposed by Zolo. Using analog form of "theory the great outdoors", he proposes that the countries of the world are organized through regional spaces within which there would be supremacy of the historical-cultural tradition of certain people (Teixeira, 2010, 85). In this model, only one state would exercise the symbolic function of external representative of the regional space and can play on behalf of a prominent position on the international scene, without, however, submit the other States to its power in any form. This is because, in these spaces, states would be endowed with a formal equality of condition. In addition, possible divergences between them could be discussed internally (within the regional space) before they could be analyzed externally (Teixeira, 2010, 286).

For the mentioned author, the historical and cultural identity of several neighboring countries with common roots and similar formation processes, facilitate their organization around that external representative, since they would share the same identity, or a very similar identity. This would give them voice to the international community because it would be strengthened at the same time preserve the cultural particularities of the region.

The lack of regulation makes interventions approved by the UN Security Council through a trial if the case, leaving the pure will of its five permanent members with veto power and its effectiveness. Hence the need of the superpowers spreading cosmopolitanism as the only valid form of organization of the States with the UN as legitimate decision-making

center of the world's problems. The Commission of the UN International Law,[62] in turn, to address the issue of the protection of people in disaster situations, understands that a natural disaster includes broader emergency situation that requires prevention activity and mitigation of its consequences, which justifies the development and systematization of international law on the subject. The Commission considers that cover natural disasters.

Despite the absence of a legislative definition of disaster, between the years 1988 and 2005, the UNSC held forty-seven peace operations worldwide. These actions are characterized by the interaction between military and civil tasks and humanitarian character. This type of action by the UN Security Council all the controversy which, as already explained, the institute carries as a form of international intervention, either as a "Neo-colonialism" in the guise of humanitarian assistance in the contemporary world, or even as an action necessary for the preservation of human rights in conflict zones (Santos, 2009, 103-125). Of all kinds, the debate over the legitimacy of the intervention ends up earning less attention to the issue of legality, on the other hand, has just summarized the authorization or the UNSC on the case. Regarding UN inaction in certain cases, it is understood that the veto unreasonably to the request for humanitarian interventions offends the rules and principles of international law, disregarding both those countries intended to help as the people who are suffering the crisis (Macklen, 2008, 369-379). To exercise the right of veto, the country should raise points as proportionality, the contemporary intervention, whether or not successful, the existence of alternative means, and not simply state that it is within the domestic jurisdiction of the State question (Macklen, 2008, 389). In fact, due to the failure of international legal instruments, humanitarian intervention was consolidated from claims of non-governmental organizations (NGOs) acting in defense of the victims of natural disasters, especially when occurring in troubled countries by civil wars, ethnic or characterized as a public calamity. In such cases, as a rule, states refuse to prevent it from being rendered medical assistance and/or food to the population, often trampled on the principles of sovereignty, non-intervention and self-determination. One of the difficulties experienced by NGOs in the last decade of the twentieth century was precisely the definition of the right to humanitarian assistance. This right directly affects the responsibility of States should be guided by obedience to the rules of protection of human rights, even if it is in conflict or hit by natural disasters. Therefore, to sum it up, it can be said that the regional veto could have a

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[62] The International Law Commission was established by the United Nations General Assembly in 1948 for the "promotion of the progressive development of international law and its codification.

lasting impact as states impacted by the problem of one state could have a say in intervention and whether they want it in their region. For example the conflict in Syria is influxing Turkey with refugees and other states are affected and there is a general state of war. Therefore, it is essential that instead leaders sitting in the veto member, direct affecters of the region should have a vote in order to maintain peace and stability of the said region.

CONCLUSION

This thesis aimed to answer the three research questions mentioned above and based on our findings, we can easily conclude that humanitarian intervention is legitimate and it has been used more as an instrument of personal gains by the intervening states. This work also aimed in its findings to present solutions for the doctrine of humanitarian intervention as the current interventions though somewhat beneficial have been targeted as more harmful.

There is a need a supranational order, on the lines of globalization in order to sustain peace and ensure a calamity like World War 1 and 2 does not happen again. However, in order to set up a world government, there would need to be abolition of any kind of sovereignty or division between states, Thus, united by a constitution, all citizens of the world would be part of one nation, ruled by a central parliament, to be initially exercised by the UN. However, this seems too idealistic. It is undeniable that the UN appears to be today, through the Security Council the supranational institution with the greatest power in the world. As seen, this appearance gives way under a deeper look at the structure of international relations, especially in terms of the unilateral US role in the post-Cold War, and its political power, economic and especially military.

Failure to institute regulations, the vagueness of its concept and its casuistry approval by the United Nation Security Council only support the argument that interventions supposedly made for the protection of human rights, is actually a political decision that reflects the interests of those countries located on top of the international system. So apart from the fear of Western domination over the world, or the existence of excessive intervention by world powers in less developed countries, we should be careful that the inaction of the Security Council does not continue to have the opposite problem, no interventions. That's because this inactive position only makes the international community remains watching the practice of genocide, war crimes and crimes against humanity being committed in certain countries without the due protection to the human person to take effect.

The concept of humanitarian intervention needs to be broadened. English School[63] of thought of international relations theory, shows in dealing with the elements of the international community prevent a comprehensive view of humanitarian interventions. By sticking to the pluralistic debate, with repercussions on how the order and justice are conceived, English School may cease to question the dynamic role that borders play in the formation of political communities, acting separately as sovereignty (Wilson, 2013, 2). Thus, the possibilities of humanitarian intervention just reduced to the understanding of the international society of states. The border element is not questioned by English School; assume an important role in establishing a forum for dialogue between the different political communities at the international level for providing dynamic elements of conducting politics. Diversity, looking optimistically, would promote the stabilization of the international order, but not of artificial way the English School argues. However pluralism is based on the construction of identities and sense of belonging to a community, creating subjects separated by borders that interact, dialogue and mutually constitute, fleeing the postmodern exclusionary logic and post- positive view (Williams, 2015, 240).

The denial of the difference would lead to the isolation condition, highlighting situations where the complex emergency occurs, threatening the stability of the international order. It is clear that Williams pluralism (2015, 240), unlike that of the English School, but sees the occurrence of complex emergencies. This is because the complex emergency and ideals of humanitarianism are controversial in the English School, with pluralistic denying its existence to defending its occurrence when the massive violation of human rights through physical and political violence. However, it gives indications that humanitarianism arise when the presence of the intolerable, but without pointing criteria to define it. Hence, it comes to our need to seek a support for such a definition in order to operationalize it, escaping the abusive use of the term to justify postures policies. The complex emergency happens then when there was a situation of isolation, preventing the diversity was maintained. International intervention would be legitimate to ensure that the space for dialogue was restored, avoiding the abuse which distort the moral and ethical elements which orientate social practices among political communities.

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[63] English School scholars regard the collectivity of states as more than a mere system and conceive international relations as a social activity with its own set of norms, rules and institutions. They state that claims that order is the norm in international politics, not the exception. It is conservative political stance. Theorists are skeptical of the likelihood and desirability of radical or large-scale change.

To do so, expand the concept of intervention. Leaving consist of enforcement action as understood by English School, intervention takes on different shapes in order to understand and alleviate human suffering through the elimination of all forms of violence, direct or structural. Based on humanitarian precepts, humanitarian intervention would turn to the guarantee of emancipation, overcoming the gap between the potential capacity and what is actually achieved by individuals, not only seeking the restoration of international order or preventing the violation of shared values. Human agency has great relevance, defining pragmatic ways of working based on the reading of reality and not on abstract assumptions.

Thus, we return to the questions that guided our exposure and were presented in the introduction. To the question of to what extent there would be a complex emergency condition, our explanation indicates that this exist whenever the realization of the policy were prevented by isolating individuals by preventing their emancipation. This understanding would surpass the limits of the English School to allow an understanding of the complex emergencies in addition to direct and material breach of the rights of individuals, including structural violence, less noticeable factor and less tackled by the international community. The active promotion of social and economic development would enter the political agenda motivating more concrete action from the international community. The limits to intervene would be perceived from the pragmatic analysis of the situation considered complex emergency potential, implying a treatment more "human" at the international level and realizing the interaction between individuals and their political communities the difficulties faced by the parties in order to avoid isolation and, consequently, the totalizing projects overwhelm the individual. Finally, it remains to talk about how states should behave during the procedure. We believe that the question should be reformulated to ask how states should behave at the possibility of intervention. The intervention should no longer be seen as something exceptional and coercive because, on the contrary, it implies the active participation of the international community in the dialogue between its various components, allowing dynamic in politics and thereby treating another humanely. The difference cannot serve as exclusion pretext, but as a way to realize their own identity and, through the recognition of the other as having human status, seek redemption, extending the understanding between the different communities and eliminating the risk insulation in order to provide the stability and proper functioning of the international order.

This work aimed to evaluate the legality of preventive intervention against the UN Charter and from documents of the Council UN Security. The preventive use of force is illegal under the Charter as the use of force was required by Article 2 (4) of the UN Charter. However, the legality of the preventive use of force in self-defense - called legitimate preventive defense - is not clearly determined in the Charter, as the wording of Article 51 leaves no room for interpretation that the enemy attack is not a sine qua non for configuring the right to self-defense. The UN Charter, by itself, does not prevent or guarantees the right to legitimate preventive defense, which generates debate about the possibility of resorting to this device.

However, the debate is not closed and should be encouraged further studies on this issue. In the cases presented, the international community has positioned itself in different ways, which shows that the assigned legitimacy was very different in each. Analysis of legitimacy is important so that, somehow, one can measure the intention of making the United preventive intervention in cases of legitimate legal defense or not. As an instrument against serious violations of human rights, preventive intervention cannot be legally used, except with the consent of the State or with the authorization of the UN Security Council. Otherwise, the principles of non-use of force and non-intervention in internal affairs, guaranteed in Articles 2 (4) and 2 (7) of the Charter, would be violated. However, humanitarian preventive interventions tend to have a high degree of legitimacy, since the aim of the intervention is regarded as commendable. Finally, the discussion on UN reform has become imperative, even within the institution itself. It is necessary to look for a system that better reflects the current reality - with "new threats" that cannot be envisioned, failed states and gross violations of human rights - which appears substantially different from that on which was built by UN.

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AUTOBIOGRAPHY

PERSONAL INFORMATION

Name-Surname: UME RUBAB SHEIKH

Date of Birth: 18.08.1989

Nationality: Pakistani

Marital Status: Single

Email: rubab.sheikh@hotmail.com

EDUCATION

MSc. International Relations & Political Science / 20.1.2016
Near East University
Department of International Relations & Political Science
Faculty of Economics & Administrative Sciences
Nicosia, North Cyprus

LLB (Hons) / 01.9.2013
Department of Law
University of London International Programmes
London, United Kingdom

Diploma of Law / 01.9.2010
Department of Law
University of London International Programmes
London, United Kingdom

High School 01.09.2008
Roots College International
Islamabad, Pakistan

FOREIGN LANGUAGES

	Reading	**Writing**	**Speaking**
English	Advanced	Advanced	Advanced
Urdu	Advanced	Advanced	Advanced

WORK EXPERIENCE

Turkish-Cypriot Human Rights Foundation   **Jan 2015 - Oct 2015**
Junior Assistant. Assisted in research based on minority rights in North Cyprus.

Capital Institute Of Law   **Sept 2012 - Sept 2013**
Professor's Assistant for Public International Law course. Assisted in research and preparation of lectures pertaining to world disputes, human rights, genocides, military intervention and rights of refugees.

Gopang Law Associates   **May 2011-June 2012**
Worked as Junior Legal Associate. Handled Criminal cases involving fraud, rape, and murder and appeared in front of the civil judge. Prepared case studies, interviewed criminals and filed bail applications. Human rights and corporate issues were dealt by research and forwarded to relevant departments.

Advance Legal Studies Institute   **April 2011-Sept 2011**
Preparation of Legal Briefs and Application of Case Laws, Research and Communicating with the clients and assisting with trials/out of court settlements.

SKILLS

Excellent Networking Skills. Adobe Flash. Adobe Photoshop. Microsoft Office. Impeccable Research Skills. Teamplayer. Excellent Communication Skills.

PUBLICATIONS

"Humanitarian Intervention in Libya: Aftermath" (2016). Near East University. *Social Science Journal*. (to be published in April edition).

"Humanitarian Intervention in Syria: Refugee Crisis" (2016). Near East University. *Social Science Journal*. (to be published in April edition).