

# AN APPRAISAL OF HUMANITARIAN INTERVENTION UNDER INTERNATIONAL LAW\*

## **Abstract**

*Humanitarian intervention is a controversial concept in international law. It is not provided for by the United Nations Charter as it neither constitutes a legitimate use of force authorized by the United Nations Security Council (UNSC) nor the use of force in self-defence. Article 2(4) of the United Nations Charter clearly prohibits the threat or use of force against the territorial integrity or political independence of any state<sup>1</sup>. However, since the creation of the United Nations Organization in 1945, there have been many instances of intervention on humanitarian grounds and the practice has vigorously resurged after the cold war<sup>2</sup>. In this article, we shall consider the meaning of humanitarian intervention as well as the legal basis of the doctrine. We shall also review some cases of humanitarian intervention so as to ascertain whether or not there is presently a right to humanitarian intervention in international law and finally make suggestion for the future of the doctrine.*

## **Definitions/Legal Basis of the Doctrine of Humanitarian Intervention**

### **Definitions**

Humanitarian intervention has been defined as:

the use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the government of the state within whose territory, force is applied.<sup>3</sup>

The doctrine has also been defined as the:

Proportionate help, including forcible help provided by governments (individually or in alliances) to individuals in another state who are victims of severe tyranny... or anarchy...<sup>4</sup>

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<sup>1</sup> There are only two exceptions to this prohibition namely: the use of force authorized by the UNSC, and the use of force by a state in self-defence. See articles 39, 42 and 51 of the United Nations Charter

<sup>2</sup> It is important to note that before 1945, there were few instances of such intervention. They include the intervention in 1827 by Britain, France and Russia in the Greco-Turkish struggle in reaction to widespread atrocities against the Christian minorities; and the United States' intervention in Cuba in 1898 in order to put to an end 'barbarous bloodshed, starvation and horrible miseries; See Umozurike, U.O. **Introduction to International Law**, Ibadan, Spectrum Books, 2005, 3rd edition, p. 199

<sup>3</sup> Holzgrefe, J.L. 'The Humanitarian International Debate' in Holzgrefe, J.L. and Keohene, R.O. (edited) **Humanitarian Intervention: Ethical, Legal and Political Dilemmas**, New York, Cambridge University Press, 2003, p. 18

<sup>4</sup> Teson, F.R. **Humanitarian Intervention: An Inquiry into Law and Morality** - New York, Transnational Publishers, 2005, 3rd edition, p. 6

The two definitions are largely in agreement. Essentially, humanitarian intervention involves:

- i. Use of force across state borders by a state or group of states;
- ii. The purpose is to prevent or end severe, grave and widespread violations of the fundamental human rights of individuals in that other state; It is not all cases of violation of fundamental human rights that will qualify for a valid humanitarian intervention. To qualify, the violation must be grave, widespread and usually perpetrated by a tyrannous government and
- iii. The force or help applied should be proportional.<sup>5</sup> That is to say that the force deployed should be such that is necessary to end the violations but no further.

### **Legal Basis of the Doctrine**

Classical international law recognized the right to humanitarian intervention. Hugo Grotius, in his classical work specifically lists humanitarian intervention as one of the just causes of war.

According to him:

the fact must also be recognized that kings and those who possess rights equal to those of kings, have the right of demanding punishments not only on account of injuries committed against themselves or their subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard to any persons whatsoever.<sup>5</sup>

The learned jurist who is widely regarded as the father of international law while acknowledging the controversial nature of the issue, nevertheless submits that it is a just cause to undertake war on behalf of the subjects of another ruler in order to protect them from wrong hands, if the wrong is obvious and involving the infliction upon his subjects 'such treatment as no one is warranted to inflict'. He mentions cannibalism, piracy, abuse of the elderly, rape and castration of male subjects as examples of just causes for humanitarian intervention.

Similarly, John Stuart Mill in stoutly defending the doctrine of non-intervention, still recognizes some exceptions including interventions to assist victims of authoritarian and tyrannous governments.<sup>6</sup> Oppenheim summarizes the position as follows:

there is a general agreement that, by virtue of its personal and territorial supremacy, a state can treat its own nationals according to discretion. But there is a substantial body of

<sup>5</sup> Although 'proportionality' as a term in international law is generally used with respect to the exercise of the right of self-defence by states, the term is also employed by scholars of international law as one of the requirements of a proper humanitarian intervention. See Michael Walzer '**Just and Unjust Wars: A Moral Argument with Historical Illustrations**' New York, Basic Books, 1977, P. 153; Duane Cady '**Pacifist Perspectives on Humanitarian Intervention**' in Philips R.L and Cady, D.L. (eds.) '**Humanitarian Intervention: Just War vs Pacifism**', London, Rowman & Littlefield, 1995, p. 38.

<sup>6</sup> John Stuart Mill 'A few words on Non-Intervention' in '**Dissertations and Discussion, Political, Philosophical and Historical**', New York, Henry Holt & Co, 1873, p. 259.

opinion and of practice in support of the view that there are limits to that discretion and that when a state renders itself guilty of cruelties and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind, intervention in the interest of humanity is legally permissible...<sup>7</sup>

As noted earlier since 1945, there have been several humanitarian interventions and a number of them were welcomed by the international community. This has taken place despite the clear prohibition of the threat or use of force against the territorial integrity or political independence of any state under the United Nations Charter. However, it has been argued and rightly in our view that the right of humanitarian intervention survived the United Nations Charter and therefore exists in parallel with the Charter.<sup>8</sup> In the **Nicaragua case**<sup>9</sup> the International Court of Justice observed that the Charter does not cover the whole area of the regulation of the use of force in international relations. The court strongly emphasized the separate existence of customary international law and treaty law, noting that a rule of customary international law is not abrogated or subsumed by the existence of a treaty on the same subject matter. Thus, given the practice of states and the opinion of notable text-writers on international law, it can be submitted that the right of humanitarian intervention had been firmly established under customary international law prior to the emergence of the United Nations Charter. After 1945, the right still survived as a rule of customary international law existing side by side with the UN Charter. Moreover, states have continued to exercise this right even after 1945 and up till date. Oppenheim justified the continued exercise of this right as follows:

The Charter of the United Nations in recognizing the promotion of respect for fundamental human rights and freedoms as one of the principal objects of the organization, marks a further step in the direction of elevating the principle of humanitarian intervention to a basic rule of organized international society...<sup>10</sup>

Oppenheim however, restricted this right to collective interventions only. At this stage, one may pause to consider the contemporary basis of humanitarian intervention. Teson identified three basic principles founded on international ethics as follows:

- a. Governments are internationally and domestically, mere agents of the people. Consequently, their international rights derived from the rights and interests of the individuals who inhabit and constitute the states;
- b. Tyrannical governments forfeit the protection afforded them by international law; and

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<sup>7</sup> Oppenheim, L.F. **International Law: A Treatise**, New York, David McKay Co, 1955, page 312.

<sup>8</sup> Chesterman, S. **Just War or Just Peace: Humanitarian Intervention and International Law**, Oxford, Oxford University Press, 2002, 1st edition, p. 53.

<sup>9</sup> **Nicaragua (Merits)** (1986) ICJ Rep. 14 para 176.

<sup>10</sup> Oppenheim, L.F., *op. cit.* p. 320

- c. The fact that all persons have rights entails that governments have the obligation to respect human rights at home and abroad, obligation to promote respect for human rights globally; and prima-facie obligation to rescue victims of tyranny or anarchy if they can do so at a reasonable cost to themselves.<sup>11</sup>

The idea is that the right to ‘territorial integrity and political independence’ which states enjoy is not for the benefit of the states themselves but to protect the fundamental freedoms of the constituent of these states. States being abstract entities cannot be happy or sad, guilty or praiseworthy, evil or good. States cannot enjoy liberty. Protecting the liberty of constituents is therefore what motivates the principle of non-intervention. Thus, the right to absolute sovereignty by states is strictly conditional on their fulfillment of protection of the liberty of their constituents. If a state adopts policies of genocide, slavery or other heinous injustices, talk of self-determination or political sovereignty becomes ludicrous.<sup>12</sup>

It has also been argued that by exercising their sovereignty to commit themselves to respect and guarantee certain fundamental rights, states have accepted that these rights go beyond their national competence and have accordingly waived the invocation of the principle of non-intervention of connection with them.<sup>13</sup>

Apart from these ethical considerations many learned scholars have endeavoured to articulate the legal principles necessary for a valid and legitimate humanitarian intervention in international law. Professor Casse<sup>14</sup> identified six legal principles namely:

- a. Severe, flagrant violations of individual rights, amounting to a downright crime against humanity;
- b. Systematic refusal by the state concerned to cooperate with the international organization, in particular, the UN;
- c. Blockage of the security council, able only to condemn or deplore the situation, while calling it a threat to international peace and security;
- d. Exhaustion of all peaceful and diplomatic channels;
- e. Organization of armed action by a group of states, not a single hegemonic power, with the support or at least the absence of opposition of a majority of UN member states; and
- f. Limitation of the military intervention to what is strictly necessary to reach the humanitarian objective.

<sup>11</sup> Teson, F.R., *op. cit.*, pages 144 – 150. See also Caney, S. ‘Humanitarian Intervention and State Sovereignty’ in Andrew W. (edited) **Ethics in International Affairs**, Oxford, Rowman & Little field, 2000, p. 120 – 121

<sup>12</sup> Christopher, P. *op. cit.* page 250

<sup>13</sup> See Corten, O. and Klein, P. ‘Droit d’ ingerence ou obligation de reaction?’ cited in Alston, P. and Macdonald, E. (edited) **Human Rights, Intervention, and the Use of Force**, Oxford University Press, 2008, p. 87 – 88

<sup>14</sup> Cassese, A. ‘Ex iniuria ius Oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community in 10EJIL (1999) 26 cited in Alston, P. and Macdonald, E. (edited) **Human Rights, Intervention and the Use of Force**, Oxford, Oxford University Press, 2008 p. 135 – 136

On his part, Paul Christopher<sup>15</sup> mentioned three conditions that must be satisfied for intervention on humanitarian ground to be justified. They are:

- a. The political objective should be publicly declared by lawful authority in advance,. In other words, the intervention should not be covert and clandestine, but should be preceded by a formal public declaration of the political objectives of the contemplated intervention;
- b. Humanitarian intervention must be a last resort. This condition is met when reasonable non violent efforts have been unsuccessful and there is no indication that future attempts will fare any better; and
- c. The cost must be proportional to the expected objectives. This involves a consideration of how many innocent persons one may put at risk in order to achieve a worthy political objective – ending humanitarian abuse.

To Professor Teson,<sup>16</sup> five conditions are necessary for a justifiable humanitarian intervention namely:

- a. A justifiable intervention must be aimed at ending tyranny or anarchy.
- b. Humanitarian interventions are governed like all wars by the doctrine of double effect. This means that the intervention should do more good than harm; the intervention has to be proportionate to the evil it is designed to suppress as innocent persons should never be targeted as means to achieve the humanitarian end;
- c. Generally, only severe cases of anarchy or tyranny qualify for humanitarian intervention;
- d. The victims of tyranny or anarchy must welcome the intervention;
- e. Humanitarian intervention should preferably receive the approval or support of the community of democratic states.

A consideration of the principles suggested by the writers above shows a near convergence of opinion on the conditions necessary for a valid and justifiable humanitarian intervention. Professor Casses's conditions (a), (b), (c), (d) and (f) are substantially in conformity with Teson's conditions (a), (b), (c) and (e) while Paul Christopher's conditions (b) and (c) are also identified by Casses and Teson. By way of reconciliation therefore, it can be said that the principles or conditions for a justifiable humanitarian intervention are:

1. A justifiable intervention must be aimed at ending tyranny or anarchy.
2. Only severe and flagrant violations of human rights should qualify.
3. Intervention should not be covert or clandestine but should be made after a formal public declaration of the political objective to be achieved.
4. All peaceful and diplomatic channels should be exhausted.
5. The victims of the tyranny must welcome the intervention, and
6. The humanitarian intervention should preferably receive the approval or support of the international community.

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<sup>15</sup> Christopher, P. *op. cit.* p.252 – 253.

<sup>16</sup> Teson, F.R. *op. cit* p. 155-164

Let us now briefly consider some recent humanitarian interventions. We shall first consider interventions that were unilateral before considering those that were authorized by the United Nations Security Council.

### **Brief Review of Some Humanitarian Interventions**

One of the Unilateral Humanitarian Interventions since the UN Charter was India's intervention in Bangladesh in 1971.<sup>17</sup> Bangladesh was formerly called East Pakistan. Pakistan was a nation geographically and ethnically divided into two entities – West Pakistan and East Pakistan. The Urdu-Speaking West Pakistanis were closer to the Middle Eastern Countries than to the Hindustan. The East Pakistanis Spoke Bengalese and considered themselves closer to the Hindu civilization. The West Pakistanis were wealthier and dominated the East Pakistanis economically and militarily. The political rights of the majority Bengalis of the East Pakistan were also frustrated. Their representation in the central government of Pakistan was 15 percent, while their number in the army was not more than 10 percent. The Pakistan government remained a military dictatorship dominated by West Pakistan officials with its attendant social and political unrests during the 1960s. In 1970, free elections were held and the political party of the East Pakistanis called the Awami league won 167 out of the 169 parliamentary seats reserved to East Pakistan. The Bengalis had thus obtained a comfortable majority in the Pakistan National Assembly. The central government under Yahya Khan felt threatened and decided to postpone the National Assembly indefinitely. The already serious situation in East Pakistan was then aggravated. On March 23, 1971, Sheikh Mujibur Rahman, the Awami League leader issued a 'Declaration of Emancipation'. On March 25, 1971, the West Pakistani Army struck Dacca and started an indiscriminate killing of unarmed civilians. According to the report of the International Commission of Jurists:

The principal features of this ruthless oppression were the indiscriminate killing of civilians, including women and children and the poorest and weakest members of the community; the attempt to exterminate or drive out of the country a large part of the Hindu population; the arrest, torture and killing of Awami league activists, students, professional and businessmen and other potential leaders...; the raping of women; the destruction of villages and towns; and the looting of property. All this was done on a scale which is difficult to comprehend.<sup>18</sup>

As a result of the massacre, Bengalis started to flee East Pakistan with the number of refugees estimated in millions. Most of the refugees flee to India and India could no longer remain indifferent. On December 6, 1971, India formally recognized Bangladesh as an independent state. The war lasted for 12 days and on December 16, the Pakistan Army surrendered in Dacca.

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<sup>17</sup> For details, see the Report of the International Commission of Jurists, **The Events in East Pakistan, 1971: A Legal study**, Geneva, the Commission, 1972,

<sup>18</sup> *Ibid*, p.26-27.

The Indian intervention was a legitimate humanitarian intervention when viewed from the legal conditions required for a valid humanitarian intervention. It provided assistance to a people engaged in a struggle for their right to self-determination which is a collective human right. Again, the intervention ended ongoing genocide which was severe, flagrant and widespread. The intervention was also welcomed with joy by the Bengalis<sup>19</sup> and generally received the support of the international community.<sup>20</sup>

Another unilateral humanitarian intervention was that of Tanzania in Uganda in 1979 which brought the brutal rule of President Idi Amin of Uganda to an end. It has been said that the crimes committed by Idi Amin probably have no parallel in modern history.<sup>21</sup> Reliable estimations put the toll in human lives at 300,000.<sup>22</sup> The international Community expressed great relief at the fall of Amin's regime. Tanzania's action was supported by the US, Britain and Russia and several African Countries. The Uganda people also supported the intervention with not less than 3,000 Ugandans fighting alongside the Tanzanians. This was yet another legitimate humanitarian intervention.

The intervention in 1992 by the Economic Community of West African States (ECOWAS) in Liberia is also considered legitimate. In December 1989, military clashes erupted between a few hundred armed followers of exiled Liberian official, Charles Taylor and government forces loyal to Liberian President, Samuel Doe. By July 1990, two groups of rebels – Taylor's National Patriotic Front of Liberia (NPFL) and a splinter faction, the Independent National Patriotic Front of Liberia (INPFL) led by a former Taylor commander named Prince Johnson, controlled 90 percent of Liberia with only the capital Monrovia under the controlled of President Doe's Armed Forces of Liberia (AFL). Within a year, civil war among the factions had claimed lives of tens of thousands of civilians. In one incident in 1990, 600 civilians taking refuge in the courtyard of St. Peter's Church in Monrovia were massacred by government soldiers. In April 1995, UNICEF officials reported that 62 persons mostly women and children were hacked to death with machetes near the Liberian port city of Buchanan. An estimated 780 percent of Liberians were displaced by the fighting and several hundred thousand refugees flowed into neighbouring nations including Ghana, Sierra-Leone, Nigeria and Ivory Coast.

The UN failed to respond. The OAU and US (Liberia's former Patron State) also did nothing. Consequently the Economic Community of West African States founded in 1975 under the treaty of Lagos decided to take matters into its hands. An ECOWAS cease fire Monitoring Group (ECOMOG) was established and land forces were deployed on August 24, 1990 comprising 3,500 naval and ground forces from Nigeria, Gambia, Ghana, Guinea and Sierra-Leone. The troops level eventually

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<sup>19</sup> Teson, F.R., *op. cit.*, p. 251

<sup>20</sup> The Security Council Resolution 307 adopted after the fall of Dacca did not condemn India as an aggressor or even imply such condemnation. The Resolution called for 'respect of cessation of hostilities' and 'withdrawal of troops as soon as possible. See SC Res. 307 of December 21, 1971

<sup>21</sup> Ullman, R.H. 'Human Rights and Economic Power: The United States vs Idi Amin' in **Foreign Affairs** 56 (1978) p. 529

<sup>22</sup> Henry Kyemba, **A State of Blood: The Inside Story of Idi Amin**, New York, Grosset & Dunlap, 1977, p. 9

reached 9,000 with Nigeria providing 70 percent of the troops and 80 percent of her funding. Peace was eventually restored.<sup>23</sup>

This intervention was unique as it was organized by a regional body without any formal approval of the Security Council. It also met the requirements of a valid humanitarian intervention as the human rights violations were grave and sense. The international Community also welcomed the intervention. On March 26, 1993, the Security Council in Resolution 813 specifically commended ECOWAS 'For its efforts to restore peace, security and stability in Liberia and condemned 'the continuing armed attacks against the peace keeping forces of ECOWAS in Liberia by one of the parties to the conflict.'<sup>24</sup>

In contrast to the above examples, the intervention by the United States in Grenada 1983 and Panama 1989 are difficult to be justified as humanitarian interventions. The situation in Grenada could not be said to be involving systematic severe and grave human rights violations. In 1979, the civilian government of Prime Minister, Sir Eric Gairy was overthrown in a bloodless coup by Maurice Bishop. Bishop was in turn removed in yet another coup in mid October, 1983 by his deputy Prime Minister Bernard Coard. Coard's government was not very effective and in a clash between soldiers and civilians resulted in the loss of several lives including the detained Maurice Bishop and three cabinet ministers. Most reports, however indicate that Bishop and his Cabinet members were summarily executed and that the army opened fire on the crowd. The killings provoked widespread condemnation. On October 25, following request by the Organization of Caribbean States and Grenada's Governor – General Sir Paul Scoon, the US with the support of few Security personnel from neighbouring islands lunched 'Operation Fury' which lasted for only 3 days. The military authorities were defeated and ousted.<sup>25</sup>

The argument in support of humanitarian intervention in this case is that keeping the regime in place would have led, with all absolute certainty, to a permanent denial of human rights.<sup>26</sup> It is however, our view that humanitarian intervention cannot be based on a mere perceived fear of human rights violations. It must be established that the government of the state concerned has embarked upon violation of the human rights of its citizens on a scale enough to warrant an intervention. The UN Charter prohibition of interference on the territorial integrity and political independence of states is not one that can be set aside merely on the subjective fear of possible violations of human rights.

In respect of Panama, the United States in December 1989, mobilized about 23, 000 troops with massive air support to remove Manuel Noriega the Panama dictator, and his regime. The decision to intervene by President George Bush (the elder) followed an 'annulment' by Noriega of an election in which Guillermo Endara had won, and a decision by the Panama National Assembly to make Noriega the Head of State with unlimited powers. The fighting resulted in a number of casualties and

<sup>23</sup> See generally "Nigeria and the ECOWAS since 1985", Federal Ministry of Justice, 1991, Chapter 15

<sup>24</sup> SC Res 813 of March 26, 1993

<sup>25</sup> Moore, J.N. 'Grenada and the International Double Standard; *American Journal of International Law*, 78 (1984): 161

<sup>26</sup> D'Amato, A. *International Law: Process and Prospect*, 1987, p. 229 – 230



after some days, Noriega was captured, arrested and prosecuted in the United States for drug offences.

On December 20, the United States President explained on television that he had ordered the action in order to restore democracy in Panama, protect the Panama Canal, safeguard the lives of American citizens in Panama and bring Noriega to justice on drug charges<sup>27</sup>.

This particular intervention was highly criticized by the international community. The UN General Assembly condemned the action by a vote of 75 to 20.<sup>28</sup>

The Organization of American States also 'deeply deplored' the action. The restoration of democracy is not one of the legal conditions for a valid humanitarian intervention. As we argued earlier in respect of Grenada, the mere fear of the exercise of dictatorial powers by Noriega was not enough to justify intervention however well-founded.

In the area of humanitarian interventions authorized by the United Nations Security Council, a good example was the humanitarian intervention by the United States, France and Britain in Northern Iraq in 1991 in order to provide safe havens for the Iraqi Kurds who were victims of gross human rights violations by Saddam Hussein's regime.

Saddam Hussein invaded and occupied neighboring Kuwait in 1990 and in 1991, the UN Security Council authorized the use of force to terminate the occupation. In a collective military action code – named 'Operation Desert Storm' Saddam Hussein's forces were crushingly defeated. During the war, Hussein attacked Kurdish villages with troops and helicopter gunships in order to suppress Kurdish revolts for independence. Almost one million of these Kurds fled their villages in the North in an attempt to reach safely in Turkey.<sup>29</sup> The Security Council, faced with mounting atrocities committed by the Iraqi government against Kurds and others adopted Resolution 688 condemning 'the repression of the Iraqi civilian population in many parts of Iraq' and demanded that Iraq immediately end the repression. The Resolution also urged Iraq to allow immediate access by 'international humanitarian organizations' and appealed to all member states to contribute to these humanitarian relief efforts. In intervening, the United States, France and Britain interpreted the term 'humanitarian organizations' mentioned in Resolution 688 to include military forces with the limited mission of humanitarian assistance. The operation dubbed 'Operation Provide Comfort' brought great relief to the refugees. There were about 452,000 major refugee camps along the Iraqi-Turkey border and the death toll from disease and starvation was estimated at about 1,000 per day.

The governments involved in 'Operation Provide Comfort' decided it was necessary to establish protected safe havens inside Northern Iraq in order to entice Kurdish refugees to return from the border with Turkey. In order to facilitate this, the US Army Commander, Lt. Gen. J.M. Shalikashvili on April 12, 1991 met with Iraqi General N. Taha and told him to remove all Iraqi ground forces locations South of the 36th parallel and to cease all air operations north of the parallel or risk the

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<sup>27</sup> For detailed history, see Chesterman, S. op. cit p. 102-103

<sup>28</sup> UN General Assembly Resolution 44/240 of 1989

<sup>29</sup> See generally Adelman, H. 'Humanitarian Intervention: The case of the Kurds' in **International Journal of Refugee Law**. 1992, p. 5-7

potential use of allied offensive military force. By the next day, elements of the US 24th Marine Expeditionary Unit and the 10th Special Forces Group had been airlifted into the town of Zakhu in Northern Iraq to secure the surrounding area and prepare for the construction of refugee repatriation camps. Iraqi military and government officials quickly ceded control over the area to the intervention force.

This humanitarian intervention was clearly justified in view of the grave and serious human right violations by Saddam Hussein's regime against the minority Kurds. The intervention was also meant to secure the human rights of the victims of the violations and it was not covertly or clandestinely carried out.

The same can also be said of the intervention by member States of the North Atlantic Treaty Organization (NATO) in Yugoslavia in 1994<sup>30</sup>. After the fall of the communist government of Yugoslavia in 1991, the various republics that made up Yugoslavia started the path toward secession and proclamation of independence resulting in an ethnic and religious conflicts. The atrocities reported were of such gravity and magnitude as to be compared with those committed by the Nazis in the 2nd World War. They included a massacre of 200 Muslim men and boys by Serb Police in Central Bosnia; murder of 2,000 to 3,000 Muslims by Serb irregulars; summary executions and widespread rape as an instrument to fulfill the goal of ethnic cleansing.<sup>31</sup>

### **Is there a Present right of humanitarian Intervention?**

From our analysis so far, this question can be answered in the affirmative. There is a present right of intervention in the territorial integrity and political independence of a state based on humanitarian considerations. However, unlike the pre-Charter interventions, some post Charter interventions have not been strictly based on humanitarian considerations. There have also been cases of some states acting alone and unilaterally. Even the intervention authorized by the Security Council raise a number of issues one of which is whether the United Nations' Charter provides for the Security Council to authorize interventions based on humanitarian considerations. There is no express provision in the United Nations Charter under which the Security Council may authorize humanitarian intervention. However, it can be said that the Security Council can authorize humanitarian intervention in cases where the humanitarian crisis actually threatens international peace and security. In this regard, the Security Council would be acting based on its powers under chapter seven of the United Nations Charter.<sup>32</sup>

A fall out of the foregoing consideration is that although there is a right of humanitarian intervention in international law, state practices differ and there is no

<sup>30</sup> Following Several UN Security Council Resolution such as Resolution 770 of 13 August, 1992, Resolution 781 of October 9, 1992 and Resolution 816 of 31st March 1993.

<sup>31</sup> Cigar, N.L. **Genocide in Bosnia: The Policy of Ethnic Cleansing**, Texas, Texas A & M University Press, 1995. Another example of Interventions authorized by the Security Council was the United States intervention in Somalia in 1992 in an operation called 'Operation Restore Hope'. Mounting Casualties forced the United States to withdraw from Somalia in 1994 and the whole Security Council mission in that country ended in 1995

<sup>32</sup> In **Prosecutor vs Tadic**, Case No. IT.94 – 1 the Appeals Chambers of the International Criminal Tribunal for the Former Yugoslavia held that humanitarian intervention authorized by the United Nations or an appropriate regional body is lawful

agreement as to the principles guiding such interventions. Can intervention be conducted by a single state acting alone and unilaterally or must it be by a group of states? Must intervention be based on ending tyranny and grave human rights violations only or can it be extended to include the restoration of democracy? Is the authorization of the United Nations Security Council or a regional body a sine qua non or is it enough that the intervening state or states enjoy popular support of the international community.

One thing is certain, and that is, that these differences in state practices will continue given the usual political considerations underlying most humanitarian interventions. Our view therefore is that to ensure certainty and eliminate abuse, the intervention of the United Nations by way of a positive legal pronouncement is necessary. One way of doing this is by the adoption of a United Nations Declaration on Humanitarian Intervention which shall streamline the present divergent practices.

### **Conclusion**

The right to interfere in the territorial integrity and political independence of a state by another state on humanitarian grounds had been firmly established under customary international law. That right also survived the United Nations Charter despite the Charter's provision forbidding the threat or use of force against the territorial integrity and political independence of any state. This is because the Charter itself does not cover the whole area of the regulation of the use of force in international relations. However, post Charter humanitarian interventions have shown the absence of uniform practices by States. Given the contemporary expansion in the scope of armed conflicts, and in order to guide against abuse, it is our submission that the future of the right of humanitarian intervention by states lies in the adoption of a positive international law which shall lay down the *modus operandi* for a valid humanitarian intervention.

