

International law and the world politics law international essay

Law



CHAPTER 33. 1 DEFINING PUBLIC INTERNATIONAL LAW" Public International Law consists of rules and principles of general application dealing with the conduct of states and of international organizations and with their relations inter se, as well as with some of their relations with persons" (Rahmouni, 2007). It reflects the rules governing the international order since their appearance at the end of the middle ages and their later specification in the Treaty of Westphalia in 1648. Since its conception, public international law has been built on the notion of equality of sovereign states . Therefore, according to Rahmouni, " International law thus concerns the structure and conduct of states and international organizations. It essentially consists of rules and principles which govern the relations and dealings of nations/states with each other, while also covering rules that govern the relations between states and other subjects of international law". International Law is also rooted in acceptance by the nation states which make up the international system. Customary law and conventional law are primary sources of international law. Customary international law comes into being when states follow certain practices generally and consistently out of a sense of legal obligation. Conventional international law derives its powers from international agreements between actors and may take any of the forms that these states agree upon. Agreements may be made in respect to any matter except to the extent that the agreement conflicts with the rules of international law, incorporating basic standards of international conduct, or the obligations of a member state under the Charter of the United Nations. International agreements create law for the parties of the agreement. They may also lead to the creation of customary international law when they are

intended for adherence generally and are in fact widely accepted. Customary law and law made by international agreements both have equal authority as sources of international law.

3. 2 THE PRINCIPLE OF STATE SOVEREIGNTY AND NON-INTERVENTION

State sovereignty is one of the most fundamental principles of international law. It refers to the independence and legal equality of all autonomous states and so helps ensure the protection of weaker states from more powerful ones." It is a concept which provides order, stability and predictability in international relations since sovereign states are regarded as equal, regardless of comparative size or wealth. The principle of sovereign equality of states is enshrined in Article 2. 1 of the UN Charter. Internally, sovereignty signifies the capacity to make authoritative decisions with regard to the people and resources within the territory of the state. Generally, however, the authority of the state is not regarded as absolute, but constrained and regulated internally" (ICISS Report, 2003).

Therefore, sovereignty is the power of a state to do everything necessary to govern itself, such as making, executing, and applying laws; imposing and collecting taxes; making war and peace; and forming treaties or engaging in commerce with foreign nations. The Montevideo Convention of 1933 enumerates the various prerequisites required for a state to be considered sovereign. The Montevideo Convention on Rights and Duties of States of 1933, Article 1 provides: The State as a person of international law should possess the following qualifications:(a) a permanent population(b) a defined territory(c) government(d) capacity to enter into relations with other States.

The modern concept of sovereignty traces its history back to the emergence of centralized absolutist states from the decentralized political systems of

feudal Europe. While it is impossible to place an exact date on when the modern nation-state emerged, it is often associated with the signing of the Treaty of Westphalia in 1648. This treaty ended the Thirty-Years War in Europe and established the national self-determination as a principle for the formation of a state. That is, states were recognized as political units associated with a population that had a common cultural, language, religious, or historic heritage. These rights enjoyed by the monarch became the doctrine of nonintervention and the doctrine of formal equality in modern international law. Nonintervention has been codified in many treaties and agreements. Most notably, it appears in Article 2, Principle #7 of the United Nations Charter: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII." Nonintervention, simply put, means that sovereigns have the right to be free from interference by others in their domestic affairs. The doctrine of formal equality was also codified in Article 2 of the UN Charter. "The Organization is based on the principle of the sovereign equality of all its Members." 3. 3 INTERNATIONAL TREATIES The international treaties that are usually considered in relation to humanitarian intervention are: the UN Charter, the Genocide Convention, the international human rights framework that protects fundamental human rights. 3. 3. 1 UN CHARTER The legislative history of the UN Charter shows that the drafters of the charter clearly intended to render illegal all excuses for resorting to military force, except those explicitly

stated in the Charter. In accordance with this principle Article 2(4) completely bans the use of force, therefore replacing pre-Charter law of intervention. Article 2(4) of the UN Charter (1945) 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 in any other manner inconsistent with the Purposes of the United Nations" (UN Charter). A strict interpretation of this article would suggest that the prohibition of force is absolute, with only two clearly defined exceptions Article 51 which provides that force can be used in self-defence and Articles 39 and 42 which allow Security Council authorisation of force under Chapter VII of the Charter if this is necessary to ' maintain or restore international peace and security' (UN Charter, Chapter VII). Indeed this general prohibition on the use of force is widely believed to have the status of jus cogens in international law. A cursory perusal of Article 2(4) ' does not suffuse any intervention on humanitarian grounds with legality, unless one follows a radical mode of legal interpretation and reads in additional words that are not already there in the text. Judicial interpretation endorses a similar perspective. In the Nicaragua Case, the ICJ had explicitly ruled that the use of force could not be the appropriate method to monitor or ensure respect for human rights, that there is no general right of intervention in international law and, therefore, intervention violated international law. Although humanitarian intervention does exist in state practice, and although state practice is deemed a source of law as under Article 38 (1) (a) of the Statute of the ICJ, considering the hegemony of the sources of law in the same provision, there is a generally accepted notion that state practice

cannot over rule treaty and customary law, both of which denounce the use of force except in self-defence purposes. Apart from this critics of UHI also argue that the very concept of intervention runs completely contrary to the idea of state sovereignty. The whole basis of international law as it stands today is based on the concept that all states are free to choose their international relations and domestic pursuits. If this core principle was violated, even for such a noble purpose as HI, the whole fabric of international affairs might unravel, the resulting chaos leaving the weaker states completely at the mercy of more dominant ones. Even in cases of extreme genocide the UN Charter has no provision for the use of force to protect such endangered populations and therefore according to a restrictionist interpretation of the Charter, unilateral humanitarian intervention to stop or prevent genocide is not legal unless explicitly authorised by the UNSC. The UN Charter also clearly outlaws the practice of military intervention. The principles of state sovereignty and non-intervention are set out in Article 2(7), which provides that "[n]othing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state" (UN Charter). Therefore the UN Charter protects the principles of the international system that the Restrictionists view as indispensable state sovereignty, non-intervention and the non-use of force, therefore claiming that there are no provisions for humanitarian intervention under the UN Charter. On the other hand, solidarists point to the provisions in the Charter that protect human rights. One of the primary aims of the UN is to 'reaffirm faith in fundamental human rights' (UN Charter) and human rights are

protected in Articles 1(3), 55 and 56. However, it is important to note that there are no mechanisms or allowances that the states can use to enforce these human rights without Security Council authorisation. Rosalyn Higgins, a restrictionist, argues that " the Charter could have allowed for sanctions for gross human rights violations but deliberately did not do so" (Wheeler, 2000).

3. 3. 2 GENOCIDE CONVENTION

In Article I of the Genocide Convention, signatories agreed to prevent and punish genocide, and in Article VIII, to do this through actions mandated solely by the UN. However, another significant source in the argument of genocide is the R2P doctrine, which details the various appropriate actions to genocide. Prevention is its most important dimension. It argues that in cases where a government cannot or fails to protect its own citizens against aggression, the responsibility to protect falls on the international community's shoulders and the principle of non-intervention may be foregone in this scenario. Therefore, this convention outlines that " self-defense not only applies to the defense of a country's own citizens within its borders, but also to citizens in danger internationally"(Sima 2010, pg 7). However it should be kept in mind that the R2P is only a declaration which is non-binding and hence not enforceable by law. To address the responsibilities promoted in R2P, one can assume that states have chosen to act either in their own self-defense or in the defense of innocents but their motives may not always be this altruistic.

3. 3. 3 Human rights framework in treaties

Solidarists may point to other treaty law that reaffirms the protection of fundamental human rights, including the Genocide Convention (1948), the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the

International Covenant on Economic, Social and Cultural Rights (1966). The Genocide Convention legally obligates signatories to prevent and punish genocide through the UN and has been ratified by 133 states, including the United States (UN Genocide Convention) The prohibition of genocide is thought to be customary international law but some states have avoided any legal obligations by adding reservations to the Convention. The United States' reservation stated that ' nothing in the Convention requires or authorises legislation or other action by the United States...prohibited by the Constitution' (UN Genocide Convention, reservations) This removes much of the obligation to act to stop genocide. Although international human rights law does protect populations from genocide in principle, Wheeler argues that the human rights framework is " severely limited by the weakness of its enforcement mechanisms" (Wheeler, 2000). While the international community may be committed to protecting human rights under international law there are few mechanisms that enable action to be taken to prevent the worst abuses, such as genocide. Therefore, despite international agreement that genocide is morally reprehensible, international conventions seem to uphold the principles of sovereignty, non-intervention and the non-use of force. For pluralist international society theory these principles are ' plural conceptions of the good life' and are necessary to maintain international order which, according to pluralism, is the ' ultimate protector' of human values.

3. 4 CUSTOMARY INTERNATIONAL LAW

It is also necessary to consider customary international law when considering whether sufficient solidarity exists between states for a norm of humanitarian intervention. Customary international law has two components: state practice and opinio

juris sive necessitatis, which is the observance of rules by states because they believe such conduct is obligatory as a matter of law (Dowell, 2009). According to Brownlie: "... evidence of state practice must prove a consistency and generality of practice, although universality is not required, and evidence of opinio juris must prove that states recognise the practice as obligatory". Unilateral humanitarian intervention, intervention without Security Council authorisation, was not proposed as a legal justification of the use of force by states until the 1990s. In the 1970s there were various interventions by states that, according to Wheeler (200), " could have been justified as humanitarian but humanitarian justifications of legality were not offered by the intervening states and nor were they accepted by the international community as legitimate". Such interventions included the Indian intervention in Bangladesh (1971) which enabled independence from Pakistan and an end to oppression, the Vietnamese intervention in Cambodia (1978) which put an end to Pol Pot's regime, and the Tanzanian intervention in Uganda (1979) which removed Idi Amin from power. Vietnam was heavily criticised in the General Assembly despite the fact that this use of force ended genocide in Cambodia. 41 This demonstrates that there was not a legally binding norm of customary international law during the Cold War for military intervention to stop genocide. This is further evidenced by two General Assembly resolutions that specifically and absolutely outlawed intervention: the Friendly Relations Declaration (1970) and the Definition of Aggression resolution (1974). However, it has been argued that an emerging norm of humanitarian intervention has started to develop since the end of the Cold War. During the 1990s the Security Council started to interpret its

mandate more broadly, authorising forcible interventions under Chapter VII on multiple occasions for humanitarian reasons. Mayall (2000) gives the examples of Somalia (Resolution 814, 1993), Bosnia (Resolution 819, 1993), Rwanda (Resolution 929, 1994), Haiti (Resolution 940, 1994) and Albania (Resolution 1101, 1997). It is evident that in the 1990s there was a shift towards humanitarian intervention authorised by the Security Council due to an expansive interpretation of Article 39. However, the Security Council has not been particularly successful in its attempts to prevent grave violations of human rights. According to the report of the Secretary-General's High-Level Panel on Threats, Challenges and Change in 2004, 'the Security Council so far has been neither very consistent nor very effective in dealing with these cases, very often acting too late, too hesitantly, or not at all'. The utter failure of the Security Council, along with the rest of the international community, to prevent the Rwandan genocide of 1994 illustrates this point. According to Adelman and Surhke 1996 "The eventual 'Operation Turquoise' by France, authorised by Security Council Resolution 929, arrived months too late to save the estimated 800 000 Tutsi and moderate Hutu who were slaughtered by extremist Hutu militia and radical army personnel". It can be concluded that while the Security Council is able to authorise the use of force to prevent or stop genocide and other grave violations of human rights on a case-by-case basis, there does not exist the consistency and generality of practice for this to be a legally binding customary norm. A legal right to unilateral humanitarian intervention was not claimed until the end of the 1990s, when NATO states undertook 'Operation Allied Force', intervening in the Kosovo region of Yugoslavia to stop the Serbian

oppression of Kosovar Albanians in 1999. Vaclav Havel (2000) argued that this military intervention was 'probably the first war that has not been waged in the name of "national interests" but rather in the name of principles and values'. The intervention was not authorised by the Security Council so is widely regarded as not being legal. However, arguments have been proposed that this action and the justifications that were given for it point to a developing norm of unilateral humanitarian intervention to stop the gravest violations of human rights, including genocide. Cassese (1999) argues that 'it was the first time in history that the United States or its European allies had intervened to head off a potential genocide'. However, the general acquiescence or approval of the NATO intervention is not enough to prove the existence of a norm of customary international law. China argued that NATO had "seriously violated the Charter of the UN and norms of international law and had undermined the credibility of the Security Council" (Gray, 2000). Some other intervening states, like the United States and Germany, declared that they did not want the action in Kosovo to be seen as precedent. According to Gray (2000), "the persistent opposition of China, Russia and the Non Aligned Movement to intervention without Security Council authority means that the doctrine is far from firmly established in international law". The international reaction to the NATO intervention could be further evidence in support of the pluralist contention that the international community is not united enough to agree on global principles of justice and human rights. CHAPTER 4 In the Post-Cold War era, the claim of universal human rights and the practice of so called humanitarian interventions in situations of extreme human rights abuse have

gained more and more consensual support seen in international legal customary and state practice. However, the issue has remained highly controversial as it highlights the potential irreconciliation between values of state sovereignty, non-intervention, and territorial integrity on one side, and the pursuit of universal human rights on the other. Non-intervention is commonly understood as the norm in international society, but should military intervention be permissible when governments massively violate the human rights of their citizens, are unable to prevent such violations, or if states have collapsed into civil war and anarchy? This is the guiding question addressed in this chapter. International law forbids the use of force except for purposes of self-defence and collective enforcement action authorized by the UN Security Council (UNSC). The challenge posed by humanitarian intervention is whether it also should be exempted from the general ban on the use of force. This chapter examines arguments for and against forcible humanitarian intervention. The delicate controversy at the heart of this debate constitutes the main conflict line between the two sides of the human rights discussion, Solidarists and Pluralists. The former camp advocates state interaction based on a deeper level of cooperation, where states commonly pursue higher moral values such as justice. The latter is primarily concerned with orderly relations of coexistence, in which states should not interact except for on basic values, such as order. Hence solidarists and pluralists agree that states interact with each other since they share certain goals and values, but differ in opinion on the nature and scope of these values. Values are pursued through the working of primary institutions of international society which set the context of state interaction. Subsequently, institutions

function in accordance with the shared values which set them up.

Traditionally, the institution of sovereignty has been central in the human rights debate, frequently invoked by the pluralist side to underpin arguments of order. According to pluralist international society theory the principles of sovereignty, nonintervention and the non-use of force are the ‘ cardinal rules’ of the international system and are fundamentally necessary for the maintenance of international peace and security. Humanitarian intervention without Security Council authority violates these principles and therefore jeopardises international stability and the peaceful functioning of the international system. Pluralist theory maintains that it would be far better for the well-being of individuals for a strict rule that prohibits humanitarian intervention than to have a norm of humanitarian intervention without international agreement over the principles that should govern it, as this would weaken the international order. Intervening in the domestic affairs of a genocidal state would arguably weaken the ‘ cardinal rules’ of sovereignty, non-intervention and the non-use of force, damaging international stability through the actual use of force and also by the precedent this may set in the future. However, it can be argued that genocide is such a grave and widespread violation of human rights that the international community has a right, or even a moral obligation, to intervene using force if necessary as a last resort. The solidarist argument put forward by R. J. Vincent is that the principles of sovereignty, non-intervention and the non-use of force are not absolute rights and that states should be subject to minimum standards of decency before they qualify for such protection from the international community, being denied protection when they commit atrocities that ‘

shock the conscience of mankind'. Farer is in agreement that 'nonintervention is not an absolute', arguing that states can temporarily lose their right to sovereignty and non-intervention if this will help to avoid a gross violation of human rights such as genocide (Farer, 2005). This concept that individual human rights are more important than state sovereignty was the basic premise behind the concept of "Responsibility to Protect".

4. 1 ARGUMENTS IN FAVOUR OF HUMANITARIAN INTERVENTION

This part explores the case for the legal right of humanitarian intervention more thoroughly. In this complex debate on the issue of humanitarian intervention, this camp is known as the Solidarists or Counter-Restrictionists. This camp bases its arguments on three claims first that a legal right for intervention can be found in the U. N Charter in forms of protection of human rights, second that humanitarian intervention is permissible under the tenets of customary law and lastly some scholars argue that regardless of all legalities involved states have a moral obligation to end large scale suffering.

4. 1. 1 SOLIDARIST'S INTERPRETATION OF UN CHARTER

The first argument presented by the Solidarists is that human rights are just as important a part of the UN Charter as are peace and security matters. To augment their argument they point to various articles of the Charter, namely they say the Charter's preamble and Articles 1(3), 55 and 56 all highlight the importance of human rights (See appendix II for full articles). Article 1(3) does in fact identify the protection of human rights as one of its core principles. This has led some advocates of the Solidarist approach to interpret this as a humanitarian exception to the ban on the use of force in the charter. Likewise some lawyers also argued humanitarian intervention was an

acceptable phenomenon because it did not violate the principles of "territorial integrity" and "political independence" that article 2(4) enforces. But this is a very weak interpretation that is disregarded by many lawyers. 4.

1. 2 SOLIDARIST'S INTERPRETATION OF CUSTOMARY INTERNATIONAL

LAW Other proponents to this school of thought admitted that there is no legal basis to be found for their argument in the UN Charter, instead they turn towards customary law as the basis for their convictions. For a rule to be considered as part of customary international law states first must have been engaged in that practice and secondly must believe that the law permits their practice. International lawyers refer to this phenomenon as *opinio juris*. Counter-restrictionists contend that the customary right to humanitarian intervention preceded the UN Charter, evidenced by the legal arguments offered to justify the British, French and Russian intervention in Greece (1827) and American intervention in Cuba (1898). They also point to British and French references to customary international law to justify the creation of safe havens in Iraq (1991) and Kofi Annan's insistence that even unilateral intervention to halt the 1994 genocide in Rwanda would have been legitimate (Wheeler & Bellamay, 2005). 4. 1. 3 MORAL RESPONSIBILITY Lastly supporters for the case of humanitarian intervention also argue that regardless of the complex legalities involved in the issue, countries have a moral responsibility, even a moral imperative, to help protect the innocent and stop systematic abuse where they can. To this end various scholars have advanced different arguments. Blair (1999) for example argues that with as the world globalizes conflicts become less isolated. Instead a large scale humanitarian conflict in one part of the world may have serious

repercussions for another area, political and economic linkages today are too intertwined for the world to ignore conflicts and hope that they resolve themselves. They further argue that an integral part of a state's sovereignty is their obligation to protect their citizens rights and security and if they fail to do so there sovereignty is undermined enough for a foreign state to step in and step up to stop the suffering (Tesson, 2005). Still others like Caney in his 1997 article derive strength for their views by pointing towards the common humanity principle. He states that all human beings not only have individual rights, they also have a responsibility to uphold human rights for others. lastly proponents for this view of thought like Ramsay advocate just war theory principles, saying that the duty to offer charity to those in need is universal.

4. 2 ARGUMENTS AGAINST HUMANITARIAN INTERVENTION

Opinions against unilateral humanitarian intervention are forwarded by the Restrictionists and Pluralists camps, in these camps various scholars, policymakers and lawyers have advanced seven different arguments to warn against the perils of forcible military intervention.

4. 2. 1 NO LEGAL BASIS

Restrictionist lawyers usually argue that the common good of all would be served best by prohibiting all use of force, in all contexts except self-defence or where the UNSC has explicitly given permission. They argue that that except for Article 51 there are no legal exceptions to article 2(4). They also point to the fact that during the cold war when states acting unilaterally could have plausibly invoked humanitarian claims (the key cases are India's intervention in East Pakistan in 1971, Vietnam's intervention in Cambodia in December 1978, and Tanzania's intervention in Uganda in January 1979), they had chosen not to do so (Wheeler & Bellamay, 2005). Traditionally

interveners have typically either claimed to be acting in self-defence (during the cold war especially), have pointed to the implied authorization of UNSC resolutions, or have refrained from making legal arguments at all. They forward all these points to reiterate the fact that there is no legal basis for UHI in international law.

4. 2. 2 SELFISH MOTIVATIONS

The next argument this camp forwards is that humanitarian intervention is never done only for altruistic motives. This argument is dominated by the Realist schools of thought who say that firstly genuine humanitarian intervention is irresponsible because it does not usually serve the state's interests. Secondly in cases where states do intervene they do so only because they have ulterior motives and guided by calculations that forward their own interests instead of those of the victims. As Noam Chomsky argued, " for one thing, there's a history of humanitarian intervention. You can look at it. And when you do, you discover that virtually every use of military force is described as humanitarian intervention." Chomsky precisely pointed out everything that is wrong with the way humanitarian intervention is frequently justified and carried out. As Jayakumar (2012) argues, " There is a quick resort to military force without relying on force itself as a last resort; there is always an ulterior motive that predisposes a state's decision to intervene; and, many a time, the intervention itself is unilateral and unauthorized". Furthermore Realists also argue that states not only intervene due to selfish reasons, their statist ideology does not allow them to risk the lives of their own people for those of complete strangers. Bhikhu Parekh (1997) sums up this position: " citizens are the exclusive responsibility of their state, and their state is entirely their own business". So

Parekh argues that leaders have a responsibility to their own citizens that cannot be superseded by foreign victims. If the civil society of a state has collapsed it is the responsibility of that state's nationals and leaders for them to pull themselves out of their crisis, not those of unrelated strangers in another country.

4. 2. 3 DANGEROUS PRECEDENTS

4. 2. 4 PROBLEM OF ABUSE

Chesterman (2001) and Franck and Rodley (1974) have espoused the next argument, which is the problem of abuse. They state that in the absence of an impartial mechanism states may espouse humanitarian motives as a pretext to cover up their national self-interests. The classic case of abuse was Hitler's argument that it was necessary to invade Czechoslovakia to protect the life and liberty of that country's German population. So critics wonder that states will abuse the right to humanitarian intervention by justifying their own ends according to this principle.

4. 2. 5 PROBLEM OF SELECTIVITY

States always apply principles of humanitarian intervention selectively, resulting in an inconsistency in policy. Because state behaviour is governed by what governments judge to be in their interest, they are selective about when choose to intervene. The problem of selectivity arises when an agreed moral principle is at stake in more than one situation, but national interest dictates a divergence of responses. A good example of the selectivity of response is the argument that NATO's intervention in Kosovo could not have been driven by humanitarian concerns because it has done nothing to address the very much larger humanitarian catastrophe in Darfur. Selectivity of response is the problem of failing to treat like cases alike.

4. 2. 6 CULTURAL RELATIVISM

Pluralist international society theory identifies an additional objection to humanitarian intervention,

the problem of how to reach a consensus on what moral principles should underpin it. Pluralism is sensitive to human rights concerns but argues that humanitarian intervention should not be permitted in the face of disagreement about what constitutes extreme human rights violations. These scholars point to the fact that there is no universal conception of what human rights are. They are different if not in definition than in intensity for different countries. The concern is that in the absence of consensus on what principles should govern a right of humanitarian intervention, the most powerful states would be free to impose their own culturally determined moral values on weaker members of international society. R. J. Vincent summarizes well the case for cultural relativism: "There is no universal morality, because the history of the world is the story of the plurality of cultures, and the attempt to assert universality . . . as a criterion of all morality, is a more or less well-disguised version of the imperial routine of trying to make the values of a particular culture general" (Vincent pg 37-38). Reference it4. 2. 7 EFFECTIVENESS A final set of criticisms suggests that humanitarian intervention should be avoided because it is impossible for outsiders to impose human rights. Liberals argue that states are established by the informed consent of their citizens. Thus, one of the foremost nineteenth century liberal thinkers, John Stuart Mill (1973), argued that democracy could only be established by a domestic struggle for liberty. Human rights cannot take root if they are imposed or enforced by outsiders. Interveners will therefore find either that they become embroiled in an unending commitment or that human rights abuses re-ignite after they depart. Mill argued that oppressed peoples should themselves overthrow

tyrannical government. In the same context it becomes apparent that external intervention becomes ineffective in the long run" Military intervention..... is a simple and short-term solution to complex and long-term problems" (Ludlow, 1999, pg 8). CHAPTER 5As we have seen humanitarian intervention is a controversial topic both when it happens and when states fail to take action. The former case is best illustrated by the United States intervention in Kosovo. Here NATO forces acting under U. S command militarily intervened in Kosovo without proper UNSC permission. On the other side of the intervention spectrum we have the case of Rwanda which was characterized mainly by inaction on the international community's part, despite the ongoing genocide and deteriorating conditions. This chapter will focus on these two extreme cases of intervention and strive to show that UHI was a failure in both these cases and so such interventions should not sought to be justified under international law.

5. 1 INTERVENTION IN RWANDA: FAILURE TO ACT

The crisis in Rwanda is an inter-ethnic one between the two warring parties of the Tutsies and the Hutus, the crisis has a long historical background, with tensions emanating between the two parties on economic and social disparity. On April 6, 1994, the Hutus began to slaughter the Tutsis in the African country of Rwanda. The brutal killings continued and the world stood by watching the slaughter. This continued for 100 days leaving approximately 800, 000 Tutsis and Hutu dead. This is a unique case in international law for intervention. Its uniqueness does not stem from unprecedented military intervention like in Kosovo, instead it is unique for the failure of the international community to take any sort of concrete action to stop the genocide. It is also significant to note the time

period of the crisis, the crisis occurred in 1994, a time that was ripe for humanitarian interventions. Indeed the 1990s decade is known as the golden decade for humanitarian intervention, Somalia and Kosovo being prime examples. Why then there was such unwillingness on the part of the international community to intervene in Rwanda? By all standards Rwanda could have been a prime test subject for intervention for humanitarian purposes. Over half a million people died in brutal killings in Rwanda, and yet no one really bothered to lift a finger in defence of these innocents. This raises some interesting dilemmas for the field of humanitarian intervention. It brings to the forefront questions like what are the standards on which humanitarian intervention is justified. Is it the number of people killed? Must that number pass a certain threshold? Or is it the geopolitical significance of the area? Why Kosovo and not Rwanda? In both cases the UN failed to reach a consensus to launch an intervention, so what is the responsibility of the international community in this scenario? What sets one humanitarian crisis apart from the others? In analyzing this intervention the question of selectivity in intervention comes to the forefront. Before we try to answer any of these questions though, it is imperative that we first have a firm grip on the situation in Rwanda, so the next section gives a brief outline on the crisis in Rwanda.

5. 1. 1 CRISIS IN RWANDA

The crisis in Rwanda was basically between two different parties, the Tutsies and the Hutu. The historical tensions between the two groups became exacerbated due to economic and social imbalances, finally erupting on April 6th, 1994.

5. 1. 2 HISTORICAL BACKGROUND

The Hutu and Tutsi are people who share a common past. When Rwanda settled as a country the people, who lived

there raised cattle. The people who owned the most cattle were called "Tutsi" and everyone else was called "Hutu." When the Europeans came to colonize the area the terms "Tutsi" and "Hutu" took on a racial role. The Germans were the first to colonize Rwanda in 1894. They looked at the Rwandan people and thought the Tutsi had more European characteristics, such as lighter skin and a taller build. Thus, they made Tutsis responsible for the conduct of state affairs. When the Germans lost their colonies in World War I, the Belgians took control over Rwanda. In 1933, the Belgians solidified the categories of "Tutsi" and "Hutu" by stating that every person was to have an identity card that labeled them Tutsi, Hutu, or Twa. (Twa are a very small group of hunter-gatherers who also live in Rwanda.) The Tutsi were only about ten percent of Rwanda's population and the Hutu nearly 90 percent, but still the Belgians gave the Tutsi all the leadership positions this created discord among the Hutu. When Rwanda began its struggle for independence from Belgium, the Belgians switched the status of the two groups. Facing a revolution that was mainly instigated by the Hutu population, the Belgian colonizers let the Hutus, who as mentioned above, constituted the majority of Rwanda's population, be in charge of the new government. This greatly upset the Tutsi who were used to being in charge. The animosity between the two groups continued for decades.

5. 1. 3 THE GENOCIDE

At 8: 30 p. m. on April 6, 1994, President Juvénal Habyarimana of Rwanda was returning from a summit in Tanzania when a surface-to-air missile shot his plane out of the sky over Rwanda's capital city of Kigali. All on board were killed in the crash. Since 1973, President Habyarimana, a Hutu, had run

a totalitarian regime in Rwanda, which had excluded all Tutsis from participating. That changed on August 3, 1993 when Habyarimana signed the Arusha Accords, which weakened the Hutu hold on Rwanda and allowed Tutsis to participate in the government. The Arusha Peace Agreement ended three years of fighting and was to pave the way for multi-party general elections. According to the treaty, the existing government was to remain in place of work until a transitional government would be set up within 37 days from the signing of the accords. All registered political parties were eligible to participate in the transitional government and were allocated ministerial posts. The CDR Hutu extremist party that advocated Hutu supremacy, opposed the negotiations and had been excluded from the process due to RPF objections (also called the RPA Rwandan Patriotic Army) to their participation. Once the transitional government was in place, the two sides would integrate their militaries into a single national army of 19, 000 men. A Neutral International Force (NIF) would ensure security throughout the country during the transitional period. Finally, multi-party elections would be held in 22 months. Both the Rwandan government and the RPF agreed that Faustin Twagiramungu, the president of the Movement Democratique de la Republique (MDR), would become prime minister of the broadly based interim government. The international community praised the signing of the accords. This weakened the control of the Hutu extremists. Although it has never been determined who was truly responsible for the assassination, Hutu extremists profited the most from Habyarimana's death. Within 24 hours after the crash, Hutu extremists had taken over the government, blamed the Tutsis for the assassination, and begun the slaughter.

5. 1. 4 100 Days of Slaughter

The killings began in Rwanda's capital city of Kigali. The Interahamwe, an anti-Tutsi youth organization established by Hutu extremists set up roadblocks. They checked identification cards and killed all who were Tutsi. Most of the killing was done with machetes, clubs, or knives. Over the next few days and weeks, roadblocks were set up around Rwanda. On April 7, Hutu extremists began gunning down the government of their political opponents, which meant both Tutsis and Hutu moderates were killed. This also included the prime minister. When ten Belgian U. N. peacekeepers tried to protect the prime minister, they were killed as well. This resulted in Belgium to start withdrawing its troops from Rwanda. Over the next several days and weeks, the violence spread. Since the government had the names and addresses of nearly all Tutsis, living in Rwanda the killers went door to door, killing everyone. Men, women, and children all were murdered. Since bullets were unavailable and expensive, hand weapons, often machetes or clubs were used for the killing. The Interhamawe gave some of the victims the option of paying for a bullet and a quick death.

5. 1. 5 THE END OF THE RAWANDAN GENOCIDE

The Rwanda Genocide ended only when the RPF took over the country. The RPF (Rwandan Patriotic Front) were a trained military group consisting of Tutsis who had been exiled in earlier years, many of whom lived in Uganda. The RPF was able to enter Rwanda and slowly take over the country. In mid July 1994, when the RPF had full control, the genocide ended. 5. 1. 6 UN ResponseAs there had been prevailing unrest and deteriorating economic conditions in Rwanda even before the genocide broke out, the UN already

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had a mission there, UNAMIR the United Nations Mission to Rwanda. But as violence erupted the UN's initial response was to recall most of its troops from the area, leaving only 444 personnel in Rwanda (Ludlow, 1999). This made many lose faith in the organization's ability to make a difference in the situation. As Sima points out: "As veto powers in the Security Council pursued their national interests and refused to recognize the situation as genocide, the United Nations voted to withdraw the majority of the force. Unfortunately, this inability to act made the UN forces nothing more than witnesses to a human catastrophe" (Sima, 2010. Pg 9). However as the situation worsened and came to the point that over 200,000 deaths were confirmed by the UNAMIR, the UN did eventually act, first by deploying a larger peacekeeping mission called UNAMIR II and finally resolution 929 was passed which authorized Operation Turquoise. The creation of UNAMIR II was an almost complete failure, as Ludlow (1999) points out, none of the 19 countries that the UN had standby arrangements with to provide troops in such a scenario came forward to volunteer their men. The UN estimated that with such an underwhelming response it would be at least 3 months before the UNAMIR II mission would be able to function properly. Due to this the UN approved Operation Turquoise under French leadership, but the success of this operation is ambiguous at best and highly controversial at the worst as there are many allegations on the French on being impartial, supporting the Hutus by providing arms and safe passages etc.

5. 1. 7 CONCLUSION This meant that the end of the Rwandan Genocide owed itself not to the efforts of the international community but to the victory of the RPF. The Humanitarian intervention staged by the French despite proper UN approval had failed.

They were unable to stop the mass murders and in fact were accused of prolonging the conflict by helping the Hutus over the Tutsies. The case of Rwanda also showed that the doctrine of humanitarian intervention was ephemeral at best, with no established guidelines and dependent solely on the whims of the big international powers. As Ludlow notes: "the unwillingness of members of the international community to commit military forces to prevent the deaths of hundreds of thousands of Rwandans, in the absence of clear national interests, also demonstrates how far there is to go in establishing a general principle or practice of humanitarian intervention" (Ludlow, 1999, pg 20). In the case of Rwanda a lack of proper media coverage of the crisis, the lack of defined selfish national interest in the area and the abysmal failure of the international community in Mogadishu, Somalia all contributed to the failure to act. This failure to act can also be seen as a United Nations failure and this lack of success was cited as a justification by the U. S, when they used North Atlantic Treaty Organization (hereby known as NATO) to militarily intervene in Kosovo.

5. 2 THE INTERVENTION IN KOSOVO

On March 24, 1999, U. S and NATO planes appeared over the territory of Yugoslavia, the first planes in the start of the 78 day bombing campaign. The mission of these planes was to target Yugoslavian airbases, ground troops and infrastructure etc in order to force them out of Kosovo. This show of NATO forces gradually forced the Yugoslavians to accept a Western peace agreement, withdraw their troops and make repatriations to the ethnic Albanians, against whom their operation was aimed. The Kosovo crisis is significant historically as the first example of NATO using military force against a sovereign nation without

explicit UN permission. But of much greater importance is this war's impact on the international law on humanitarian intervention. Proponents of humanitarian intervention point to the success of NATO in Kosovo as a turning point in international law and laude it as a concrete example for the success of legitimate use of force to stop widespread atrocities. Critics of the UHI on the other hand still stress that this operation violated international norms as the use of force against a sovereign nation is expressly prohibited under the UN Charter. This dilemma was summarized by UN Secretary-General Kofi Annan: " On the one hand, is it legitimate for a regional organization to use force without a UN mandate? On the other, is it permissible to let gross and systematic violations of human rights, with grave humanitarian consequences, continue unchecked? (Merriam, 2001)5.

2. 1 THE KOSOVO CRISIS Kosovo is a small, relatively new state which came into being in the aftermath of the disintegration of Yugoslavia in the 1990s. In 1990 ethnic Albanian Kosovars declared independence from Yugoslavia. Both Serbs and Kosovars laid claim to the region of Kosovo for different reasons which resulted in widespread civil strife in the area. In response, Slobodan Milosevic's Serbian security forces started a ruthless campaign against them, resulting in widespread human rights atrocities. This abuse of human rights is what prompted the NATO forces to intervene in the area in 1999.

5. 2. 2 HISTORICAL BACKGROUND OF THE CRISIS

The ethnic tensions between the Albanians and the Serbs have existed for years. This territory has been disputed between Serbs and Albanians for generations and their respective fortunes have ebbed and flowed. For most

of this century Serbs have been a minority in Kosovo (Beach, 2000). These tensions were tamped down after the creation of Yugoslavia in 1945 by the socialist leader Broz Tito who strictly repressed all nationalistic sentiments and was successful in keeping together the multinational, multi-religious and multilingual state of Yugoslavia (Keylor, 2001). But after his death in 1986 Serbian Slobodon Milosevic gained power and he could not repress the resurgence of ethnic nationalism in the area. In an effort to suppress the secessionist movements he took away Kosovo's autonomy in 1989. But this did not stop the rebels and instead inflamed them and in 1992, under the moderate leadership of Ibrahim Rugova, a strategy of passive resistance was adopted, a parallel state set up, a new constitution proclaimed and elections held. In 1995, however, the Dayton agreement recognized Serbia and Montenegro as the new Yugoslavia, within existing boundaries, with no special recognition for the status of Kosovo (Beach, 2000). Many Albanians switched allegiance to the Kosovo Liberation Army (KLA), a group seeking secession by violent means and by 1998 KLA's violent demonstrations for independence had brought heavy handed reprisals from Milosevic, creating a situation rife with terror, fear and violence. By the time the United Nations called for a ceasefire in March 1998 hundreds of Kosovars had lost their lives and many more had fled the area.

5. 2. 3 FAILED PEACE TALKS AND NATO INTERVENTION

On October 13th 1998 a temporary peace arrangement was made under the auspices of U. S negotiator Richard Holbrooke and Milosevic withdrew the Serbian army. The Holbrooke-Milosevic deal temporarily ended the violence

and leaders of both sides started to negotiate a formal agreement in Rambouillet, France (Keylor, 2001). But President Milosevic refused the provision of having Western forces in the area to monitor the peace and oversee the proposed referendum to establish independence. Things de-escalated from there with Serbian forces again precipitating an attack on ethnic Albanians in the northern part of Kosovo. After this failure of the Rambouillet Agreement NATO mounted a retaliatory air strike against the Serbian forces on March 24, 1999. According to Keylor (2001) NATO's air forces, known as IFOR carried out almost 10,000 missions against military targets and civilian infrastructure throughout the country for seventy-nine straight days, while Serb paramilitary forces continued to carry out their mission of ethnic cleansing against the Albanians.

5. 2. 4 CEASEFIRE

On June 3, 1999, Milosevic accepted the terms of an international peace plan to end the fighting. On 10 June, the North Atlantic Council ratified the agreement and suspended its air operations after Milosevic agreed to the withdrawal of all Serbian forces and further agreed to the deployment of NATO led multinational ground forces known as KFOR (David, 1999). On June 12, after Milosevic accepted the conditions, the NATO-led peacekeeping Kosovo Force (KFOR) began entering Kosovo. KFOR had been preparing to conduct combat operations, but in the end, its mission was only peacekeeping. By the beginning of the twenty first century KFOR faced the daunting task of restoring law and order to a devastated land. 5. 2. 5

Conclusion In many circles NATO's intervention in Kosovo is considered a resounding success. NATO forces interceded in Kosovo on the sole pretext of

saving human lives. But a closer examination of their motives show that the picture was a lot murkier than the image projected by the US. In the case of Kosovo the official justification given by NATO was to relieve the Kosovars of their suffering at the hands of the Serbian army. This viewpoint is corroborated by Moller in his 2000 paper where he says that NATO's motivation was "pure and unselfish" as it was done for the benefits of the people of Kosovo. But others are not convinced and other factors were in fact in play in the case of Kosovo and their motivation was not as altruistic as it seems on the surface. This view was corroborated by several esteemed scholars like Brendan Stone who in his 2005 article writes: "NATO came to the negotiating table with three basic economic objectives in Kosovo and Yugoslavia in 1999: (1) to dismantle Yugoslavia's competing socialist economic system, (2) to gain control of valuable mineral resources, and (3) to command the site of a future energy distribution network" (Stone, 2005). Furthermore humanitarianism might have been the initial impulse that motivated NATO to attack but it was by no means the only exclusive impulse. NATO in fact in this case was flexing its muscle and establishing its credibility. Also after their triumph in Bosnia with the Dayton Agreements, America could not afford to lose face in Kosovo and lose its established supremacy. Wheeler and Bellamy (2005) agree with this point of view as does Stone in his 2005 article. Apart from the economic and political factors mentioned above another reason for why NATO's intervention was not credible is the problem of refugees. One of the reason given by NATO in the case of Kosovo was that it did not want the people fleeing Kosovo to cause a problem for the weaker neighboring states of Macedonia etc and even the

developed European countries, who were reluctant to deal with refugees, so NATO deemed its intervention necessary but there is an inherent problem with this premise. The fact, cited also by Stone (2005), is that NATO forces exacerbated the refugee problem. Before its intervention not many people were reported to leave Kosovo but after the air strikes began this number flew to almost 1 million people. So while NATO did manage to alleviate suffering in Kosovo their motives were not purely humanitarian in nature. Also in Kosovo's case there was no proper resolution passed in the case of Kosovo that would have given authority to or made the NATO intervention legal. On the other hand the UN also chose not to condemn this intervention and Russia's objection against this were vetoed by NATO supporters in the Security Council (Wheeler and Bellamy, 2005). So it is much harder to say whether NATO had just authority in this case or not, but in the light of no proper sanction from the UN, strictly legally speaking NATO did not have just authority in this case. Lastly it is apparent that the case of Kosovo should not be touted as a shining example for the success of HI as to this day there is NATO presence in Kosovo. Over a decade later peace is only maintained in Kosovo through the presence of an external military organization this would seem to suggest that HI has failed in this oft cited example. This raises the interesting question of whether peace can ever really be achieved through forcible means. The answer would appear to be no. CHAPTER 66. 1

CONCLUSION It is now widely accepted by most scholars that the major threat to international peace and security stems not from interstate wars but from civil conflicts that transcend state borders and are accompanied by the colossal abuse of human rights. So why has UHI proved so problematic? The

answer to this question can be partly a reflection of the pessimistic experience of such interventions in the 1990s. But it is also a result of the philosophical underpinnings of international society, which appear to rule it out. Despite the record of the 1990's decade, it remains in doubt whether humanitarian intervention is consistent with the prevailing norms of international relations. The problem arises because the modern international system has been constructed on the basis of the principle of sovereignty and non-intervention, which remains the cornerstone of international law and relations. Prior to the Kosovo crisis, the experience of unilateral intervention in cases that involved coercive intervention in the conventional sense, like Rwanda, had more negative than positive results. Keeping in mind all the enumerated arguments, the political and legal barriers, and an analysis of two crucial historical humanitarian crises, it appears that under a strict interpretation of international law UHI is not permissible. Though there has been a wave of change working towards a reinterpretation of UN charter law and restructuring of international norms, culminating in the responsibility to protect, as things stand right now, not only is UHI not prohibited in international law, but the world itself is not ready to accept a doctrine for unilateral humanitarian intervention.