

**APPLICATION OF THE DOCTRINE OF HUMANITARIAN INTERVENTION  
USE OR ABUSE?-CASE STUDY OF USA**

**BY**

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EAST AFRICANA**

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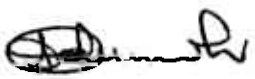
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**DECLARATION**

This dissertation is my original work and has not been presented for a masters/degree or diploma in any other university.

Signed.....

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Date.....27/09/2009.....

This dissertation has been submitted for examination with my approval as a university supervisor.

Signed.....

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Date.....27/9/2009.....

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## **DEDICATION**

**This work is dedicated to all my family for the support I got during the study.**

## **ABSTRACT**

The study sought to examine the application of the doctrine of humanitarian intervention using the USA as a case study. The aim is to assess whether the doctrine of humanitarian intervention is being applied correctly to serve the intended purposes or misused to pursue other purposes. The dilemma is about whether the doctrine is being applied for, humanitarian purposes to save humanity from grave violations of human rights or, political purposes to promote certain selfish state interests and values. There has been a great deal of concern about human rights violations and promotion of democracy lately. In principle, one can only welcome this renewed concern with the fate of faraway victims. But this common use of the human rights label, it seems, masks significant differences about what could be use or abuse of the doctrine by intervening states. The need to investigate and establish the truth about the application of the doctrine was necessary.

To do this the paper I carried out a study utilizing largely secondary sources and some primary sources based on unstructured interviews. This data was collected collected and analyzed to produce findings to the study. The findings show that out of the many interventions conducted by US in the last 30 years, only one qualified as a genuine humanitarian intervention. This particular intervention was undertaken in Somalia and served humanitarian purposes. Other interventions that were carried out by US served US selfish political interests. These interventions were disguised as humanitarian intervention to escape accountability for violation of international law. This disguise amounted to abuse of a well meaning international doctrine. The motivation of US interventions was driven by the desire to spread liberalism defined in the image of American values. Besides promoting American global interests, the US also hoped that the values of liberalism would promote international peace and shape a US favorable world order.

## **LIST OF ABBREVIATIONS**

<b>DSC</b>	<b>Defence Staff College</b>
<b>ECOWAS</b>	<b>Economic Community of West African States</b>
<b>ICISS</b>	<b>International Commission on Intervention and State Sovereignty</b>
<b>NDC</b>	<b>National Defence College</b>
<b>NATO</b>	<b>North Atlantic Treaty Organization</b>
<b>US</b>	<b>United States of America</b>
<b>UK</b>	<b>United Kingdom</b>
<b>OAS</b>	<b>Organization of American States</b>
<b>OAU</b>	<b>Organization of African Unity</b>
<b>OECS</b>	<b>Organization of East Caribbean States</b>
<b>UNOSOM</b>	<b>United Nations Operation Somalia</b>
<b>UN</b>	<b>United Nations</b>
<b>UNSC</b>	<b>United Nations Security Council</b>
<b>UNEF</b>	<b>United Nations Enforcement Force</b>
<b>ICC</b>	<b>International Criminal Court</b>
<b>IMF</b>	<b>International Monetary Fund</b>
<b>WB</b>	<b>World Bank</b>
<b>WWI</b>	<b>World War One</b>

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## CHAPTER ONE

### INTRODUCTION

#### Background

Historically the doctrine of humanitarian intervention has been in practice. In the early stages of western culture, Greek philosophers argued that there existed a universal law of nature, which everybody was obliged to obey and all positive laws had to conform to. Aristotle (384-322 BC) for example in this period writes: "...one part of what is politically just is natural, and the other part legal. What is natural is what has the same validity everywhere alike."<sup>1</sup>. It is in this context, natural law became the most fundamental source of ideas concerning humanitarian intervention and has remained its basis ever since.

The term humanitarian intervention traditionally presupposes armed interference by one or several states in the internal affairs of another state without its prior consent to prevent a situation where the most basic rights of the people of that state are being violated on a wide scale. Such action by one or several states is invariably associated with use of force. Yet, article 2(4) of the UN Charter has express prohibition of the use of force against territorial integrity or political independence of any state.<sup>2</sup> To the extent that activities associated with humanitarian intervention involve violation of the peremptory norm of international law (*jus cogens*) that safeguards the principle of sovereignty, the

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<sup>1</sup> Natali C, Aristotle's Nicomachean Ethics: Book 7.symposium Aristotelicum, Oxford University Press, 2008,pp 199-215

<sup>2</sup> UN Charter Article 2(4)

need to justify validly the application of doctrine of humanitarian intervention is important.

Critics of US interventions who include scholars, analysts and the international civil society claim that the doctrine of intervention is being abused,<sup>3</sup> for instance, the 2004 report by Human Rights Watch group accused US of abuse of the doctrine.<sup>4</sup> It cites the case of US 2003 intervention in Iraq as one such example. The Rights Watch group claims that there are contradictions between the official justifications and what the actual motivations of the interventions are.<sup>5</sup> Before the actual intervention, the Bush administration cited violations of human rights and promotion of democracy as the reason for intended intervention<sup>6</sup>. The Rights group noted that, while the main rationale for the invasion of Iraq by the United States was its alleged possession of Weapons of Mass Destruction (WMD), an important supporting rationale was regime change for humanitarian reasons. When it became clear that there were in fact no WMD, the Bush administration retroactively justified its intervention on humanitarian grounds; getting rid of a repressive dictatorship and imposing democratic rule.<sup>7</sup> The Rights Group argues that this is a case where the justification for intervention was shifted to humanitarian rationale to make it legal. According to the Watch group, the Iraqi war was not about saving people from mass slaughter; because no such slaughter was ongoing or imminent. The humanitarian rationale offered was therefore subsidiary to other reasons possibly known

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<sup>3</sup> Roth K, War in Iraq not a humanitarian Intervention, Human Rights Watch Report, January 2004, pp 57-85

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Swarz P, Art. International legal experts regard war as illegal, ICFI March 2003, pp 20-25

<sup>7</sup> Roth K, War in Iraq not a humanitarian Intervention, Human Rights Watch Report, January 2004 ,pp 57-85

to the intervener. They believe that, despite the horrors of Saddam Hussein's rule, the invasion of Iraq could not be justified as a humanitarian intervention.

On the other hand pro-interventionists, for instance, the Bush administration and her UK allies defend their intervention as justified on the basis of humanitarian concerns as a moral duty. They support the idea that it is in order for states to intervene in the internal affairs of a state where gross violation of human rights are taking place. A more principled view by these pro-interventionists is that no state should under the cover of the principle of nonintervention in domestic affairs, commit acts contrary to the peremptory rules of international law. The implication is that, where such acts occurred, other states should be able to take measures to rectify the situation on behalf of citizens of the victim state. In the case of Iraq, it was claimed that government of Saddam Hussein was committing atrocities against its citizens. This evidence, it is claimed was established in various Amnesty International reports on torture by Iraqi authorities. Amnesty report number MDE 14/008/2001 is one such report they refer to. It contained graphic details of tortures against political detainees in Iraq by the Saddam regime<sup>8</sup>. This was considered enough justification for Iraq invasion. US has strongly defended its intervention actions.

Evidence of the US and UK government's defense of their actions can be seen in the policy statements government officials make. For instance, President George W. Bush reaffirmed his commitment to the Iraqi mission in 2006 during his visit to Iraq by stating that US forces will not leave Iraq "before the job is done."<sup>9</sup> The Administration has put forward numerous rationales for remaining in Iraq, among them, building a democratic

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<sup>8</sup> Amnesty International Report dated 15 August 2001, pp 10-16

<sup>9</sup> Los Angeles Times, August 25, 2006, p. 6.

society, providing transitional security and preventing terrorism. In tying together several US objectives in one vital “job,” the Bush administration aims to make it harder for critics of an “open-ended US commitment” to question any particular goal<sup>10</sup>. In UK (an ally of US in Iraq), in a speech at the Labour Party’s 2005 conference in Brighton, Britain’s then Foreign Secretary Jack Straw justified the war in Iraq in the context of “responsibility to protect.” While Straw favored “collective action” and vowed to put the Responsibility to protect “at the heart of British foreign policy,” he defended the occupation of Iraq saying, “We are in Iraq to bring about democracy.”<sup>11</sup> To US and her supporters, their intervention in Iraq was justified from a humanitarian stand point.

There is a contention about the correct application of the doctrine of humanitarian intervention as demonstrated by the above two varied positions. There is need to investigate US intervention activities and establish the true position with regard to the application of the doctrine.

### **Statement of the problem**

This study will examine the application of the doctrine of humanitarian intervention using the US as a case study. The aim is to determine whether the doctrine of humanitarian intervention is being applied correctly to serve the intended purposes or misused to pursue other purposes. There is a dilemma about whether the doctrine is being applied to serve human rights purposes or, is applied to serve political purposes that promote certain powerful state interests and values. It is acknowledged that there has

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<sup>10</sup> Los Angeles Times, August 25, 2006, p. 6

<sup>11</sup> Speech by Foreign Secretary Jack Straw, Labour Party Conference, Brighton, September, 2005.

been a great deal of concern about human rights violations and promotion of democracy since the end of the cold war. In principle, one can only welcome this renewed concern with the fate of faraway victims. Indeed, what could be more virtuous than to risk life and limb to save distant people from inhumane treatment? However, this common use of the human rights label, it seems, masks significant differences about what could be use or abuse of the doctrine by intervening states.

The concern is that, at a time of renewed interest in humanitarian intervention, the effort to justify other interests on humanitarian basis risks giving humanitarian intervention a bad name. There is a danger that this might breed cynicism about the use of military force for humanitarian purposes, and could jeopardize deserving humanitarian cases in future. The fear is that unjustified humanitarian intervention may undermine

what is supposed to be a well meaning international undertaking.

In examining whether the US interventions could properly be understood as a humanitarian, this study will not discuss whether the US should have intervened for other reasons. Rather, now that the US government and its allies rely so significantly on a humanitarian rationale for intervention, the need to assess their claims and activities is important in order to help confirm use or abuse of the doctrine of humanitarian intervention by US during application.

## **Objectives of the study**

The study has one overall objective; to examine the application of the doctrine of humanitarian intervention and assess the extent of use and abuse with reference to US intervention cases, and three sub-objectives as follows;

- a. To examine the evolution and the current debates about the doctrine of humanitarian intervention.
- b. To examine practical US interventions and experiences.
- c. To explain the motivations of US interventions.
- d. To explain the activities that lead to abuse or use of the doctrine of humanitarian intervention by intervening states.

## **LITERATURE REVIEW**

### **Introduction**

The doctrine and manifestation of humanitarian intervention have remained highly controversial over the centuries irrespective of whether the intervention is carried out by individual states, groups of states, or by the U.N under the aegis of collective security. Debate over the doctrine is very much active today between those opposed and those in support. This review will examine the arguments on the available literature under two major categories; the anti-interventionist and pro-interventionists debates. This is because these categories form the two main contending views about the doctrine. These views are then rationalized on the basis of legal and moral content by both the anti-



interventionist and the pro-interventionist. It is important to note also that at the heart of the contention is the lack of consensus in the definition of the doctrine of intervention.

### **Definition of the concept –Humanitarian Intervention**

It is noteworthy that any attempt to deal with the concept of intervention is often faced with problems inherent in its definition.<sup>12</sup> Judge Higgins for instance argues that intervention can mean many things to many people, which range from a simple interference in the form of economic influence to military intervention.<sup>13</sup> While Fernando Teson on the other hand in attempting a definition identifies three different categories of intervention namely, “soft”, “hard”, and “forcible”. According to him, soft intervention implies simply, discussion, examination and recommendatory actions and, hard intervention refers to measures that are coercive but do not imply use of force such as economic, political and military sanctions while forcible intervention comprises acts involving the use of force.<sup>14</sup> While Sean Murphy defines humanitarian intervention as the threat or use of force by a state, group of states, or an international organization primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights.<sup>15</sup> Verwey on the other hand defines it as the threat or use of force by a state or states abroad, for the sole purpose of preventing or putting a halt to serious violation of fundamental human rights, in particular

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<sup>12</sup> Hernan Vales, ‘The Latin American view on the doctrine of humanitarian intervention’, Journal of Humanitarian Assistance February, 2001 online: [www.jha.ac/articles/a064.htm](http://www.jha.ac/articles/a064.htm)

<sup>13</sup> Rosalyn Higgins, ‘Intervention and International Law’, in ‘Intervention in World Politics’ 29 (Hedley Bull ed.) 1984, pp.37-38

<sup>14</sup> Fernando Teson, ‘Humanitarian Intervention: An Inquiry into Law and Morality’ (2d ed.), Transnational Publishers 1997, p. 135

<sup>15</sup> Murphy Sean D. 1996, Humanitarian Intervention: Canadian Yearbook of International Law, Vol. 23,451 (1985), pp. 255-8

the right to life of persons, regardless of nationality, such protection taking place neither upon authorization by relevant organs of the United Nations nor with the permission of the legitimate government of the target state.<sup>16</sup> The ICISS report<sup>17</sup> (The International Commission on Intervention and State Sovereignty) acknowledges the controversy over definition as emanating from the political width of the activities covered by this term. The report however envisions a much more broad-based definition which includes but is not limited to use of armed force. The report thus defines humanitarian intervention as action taken against a state or its leaders, without its or their consent, for purposes, which are claimed to be humanitarian or protective. The ICISS report thus, while accepting military intervention as one of the modes of intervention admits of other modes including preventive measures and coercive intervention measures such as sanctions and criminal prosecution.

Despite the lack of definitional consensus *ad idem* three conceptual strands appear to run uninterrupted across the controversy. Scholars appear to agree that first, humanitarian intervention involves some considerable measure of violation of the sovereignty of the state intervened upon, second, it inherently entails use of armed force as one of its tools, third, the term “humanitarian” implies that there is a violation of

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<sup>16</sup> Verwey VD, 'Humanitarian Intervention Under International Law,' (1985) 32 Netherlands ILR 357, p. 358.

<sup>17</sup> ICISS was a joint initiative of the Government of Canada and major foundations with the approval of the UN general Assembly formed in 2000 to deal with the legal moral, operational and political questions over the Humanitarian Intervention debate. It released its report in December, 2001 hereafter referred to in this study as the ICISS Report. Online: [www.iciss.ca/report2-en.asp](http://www.iciss.ca/report2-en.asp)

human rights on a large scale such as acts of genocide and crimes against humanity.<sup>18</sup> On the basis of the above conceptions about the term this study will discuss this analysis within the perspective of humanitarian intervention *where use of force is applied to stop grave violations of human rights in another state*. Interventions to promote democracy will also come under this perspective. In recent years, democracy has begun to emerge as a human right<sup>19</sup>.

## **Pro-Humanitarian intervention arguments**

### *The idea of sovereignty*

The US application of the doctrine of humanitarian intervention is becoming one of the latest in a series of pretexts employed to justify unilateral military intervention<sup>20</sup>. In recent decades, the U.S. has launched military actions under the rubric of human rights, overthrowing totalitarian governments and bringing democracy to people (Cuba, Vietnam, Nicaragua, Chile, Grenada, Panama, Haiti, Iraq) and preventing terrorism (Sudan and Afghanistan).<sup>21</sup> With the end of the cold war and the struggle against communism, humanitarian intervention to prevent human rights abuses is providing a rationale for selective U.S. or U.S.-led military interventions, outside the framework of the United Nations. Whereas the rationale for interventions has been humanitarian, the activities of the US have exceeded this objective and included change of governments

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<sup>18</sup> Donnelly J, 'State Sovereignty and International Intervention: The Case for Human Rights', in G.M Lyons and Mastanduno (eds) 'Beyond Westphalia? State Sovereignty and International Intervention', Baltimore, Johns Hopkins University Press, 1995, p. 115

<sup>19</sup> Franck, Thomas. "The Emerging Right to Democratic Governance." American Journal of International Law, (1992),pp 77-86

<sup>20</sup> Sarah Ramage, The Myth of Humanitarian Intervention in US Foreign Policy; Neither Legal nor Moral, Neither Just nor Right; Arizona Journal of International Law Vol,10 no.1, 1994

<sup>21</sup> Ibid

and governance structures in the victim countries. This is a violation of UN Charter provisions under article 2 (7).

Historically, the main obstacle to armed intervention, humanitarian or otherwise, has been the doctrine of sovereignty, which as already stated prohibits violating the territorial integrity of another state. One of the striking developments of the nearly past decade has been an erosion of this non-intervention norm and the rise of the doctrine of humanitarian intervention.<sup>22</sup> This school of thought holds that sovereign rights and immunities are not absolute. They depend on the observance of fundamental state obligations which include the responsibility to protect the citizens of the state. When a regime makes war on its people or cannot prevent atrocities against them, it risks forfeiting its claim sovereignty and non-intervention. In such circumstances, the responsibility to protect may devolve to the international community.<sup>23</sup>

But some political science scholars like Max Weber discount the argument that human rights issues are detrimental to state sovereignty. For instance, Weber has argued that the international human rights obligations are solely to their nationals. States have neither a right nor a responsibility to implement or enforce the human rights on foreign

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<sup>22</sup>Wil Verwey, "Humanitarian Intervention Under International Law," Netherlands International Law Review, vol. 32, 1998, pp 7-11.

<sup>23</sup>Chopra, Jarat, and Thomas G. Weiss. "Sovereignty Is No Longer Sacrosanct: Codifying Humanitarian Intervention." Ethics and International Affairs, (1992), p. 6.

territory.<sup>24</sup> In addition, the international supervision of national human rights practices is extremely limited because of lack of all the necessary domestic support.<sup>25</sup> To this end there should be no conflict between sovereignty and matters of human rights because sovereignty in itself allows states to deal with such issues in their own way.

Many scholars and philosophers have written about moral and legal arguments of intervention. This includes philosophers such as Walzer<sup>26</sup> who concentrate on the issue of a just intervention. 'Just intervention' refers to the use of military force against the sovereignty of another state, justified in legal and/or moral terms. Among the types of intervention he explicates include, the massive violation of human rights especially enslavement or massacre. According to him, the idea of sovereignty has lessened since the turn of the century because of two levels of argument: (1) morality; and (2) changing political circumstances such as the end of the Cold War and the rise of global problems such as internal wars, human rights issues and pollution. Previously, it has been argued that violating sovereignty led to conflict. In the view of pro-interventionists, this position seems to be changing. To them violations of sovereignty for reasons of human rights protection reduce conflict and promote international peace and security. Walzer fronts the view that dialogue about intervention is not supposed to be at the level of sovereignty and legal principles but pragmatism. For him it is not a question of whether the international

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<sup>24</sup> Weber C, Simulating Sovereignty: Intervention, the State, and Symbolic Exchange. Cambridge;CUP 1995,pp 14-21.

<sup>25</sup>Ibid

<sup>26</sup>Michael Walzer (3 March 1935) is an American political philosopher and public intellectual. A professor emeritus at the Institute for Advanced Study in Princeton, New Jersey, he is co-editor of the political-intellectual quarterly Dissent. He has written books and essays on a wide range of topics, including just and unjust wars.

community has the right to intervene or whether it should intervene: it is a question of how and in what way and without the limitations of idea of sovereignty.

### *Pro-intervention Legalists*

On December 20, 1989, under the Bush Administration, the United States invaded Panama. General Manuel Noriega, then de facto leader of Panama and “Commandante” of the country’s armed forces was deposed and arrested in the “operation just cause” Reporting the invasion to the U.S. Congress the next day, President Bush stated that he ordered the invasion “to protect American lives and defend democracy in Panama”<sup>27</sup>. This view implied that invasion was on the basis of humanitarian concerns. It however had opposition from legal and political analysts, for instance, Ved Nanda who argued that; Operation Just Cause was not a valid case of humanitarian intervention<sup>28</sup>. In his article in The Journal of International Law “The validity of US intervention in Panama under international Law”, Ved Nanda declared that the intervention in Panama was not dictated by humanitarian reasons and was in disregard of the international law norms on the use of force in international relations.<sup>29</sup> According to him among the overriding U.S.’s concerns were: (1) uncertainties over the fate of the Panama Canal, as the Carter-negotiated treaties came closer to implementation; (2) the role of Panama in the U.S.-Central American drug trafficking; and (3) the stubbornness of General Manuel Noriega. The humanitarian motivation cannot be located in these concerns. Humanitarian intervention is necessitated

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<sup>27</sup> Los Angeles Times, August 25, 2006, p. 6.

<sup>28</sup> Ved P. Nanda, The Validity of United States Intervention in Panama Under International Law, 84 Am. J. Int’l L. p.494.

<sup>29</sup> Ibid

where gross human rights violations are taking place. The human rights situation in Panama was not that serious to the point where outside intervention was necessary. The need to also establish the motivation of US actions is important here.

In contrast, P.H Winfred, one time Legal Advisor to the White house argued in the law journal that the Panama operation was both necessary and proportionate under international law; it was a justifiable use of force aimed at “restoring the legitimate, democratic government selected by the people of Panama,” and that the threat or use of force was not inherently wrong.<sup>30</sup> Here Winfred seemed to also place the use of force to restore democracy under the rubric of humanitarian intervention, but even so, restoration of democracy must be done on behalf of the people. There was no widespread appeal on the part of the people of Panama for US intervention in this respect.

Another law analyst, Anthony D’Amato, a vibrant defender of the Panama invasion, focused on the human rights gains of the intervention to justify its validity under international law<sup>31</sup>. He was pleased about the human rights of Panamanian citizens to achieve freedom from oppression by a dictator. To him US had the moral obligation to save the citizens of Panama from conditions of tyranny and abuse. D’ Amato believes the doctrine of humanitarian intervention serves good purposes.

### ***Moralists’ argument-Intervention is a moral duty***

According to Ermacora there is no relationship between the right to self-determination and the protection of human rights in matters of ‘gross violations’ or

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<sup>30</sup> Winfield P H, *The Grounds of Intervention in International Law*, 5 *Brit. Y.B. Int’l L.* 149, (1990),p.162

<sup>31</sup> D’Amato A, *The Invasion of Panama Was a Lawful Response to Tyranny*. 84 *Am. J. Int’l L.* 516, (1990), p.493.

“consistent patterns of violations of human rights”<sup>32</sup>. The right to self-determination cannot be claimed where human rights violations are taking place. Issues of repression of gross human rights violations are getting outside the domestic jurisdiction of states.”<sup>33</sup> This view places human rights issues outside the reach of the Article 2(7) ban on intervention, even in cases not amounting to a threat to peace. Fonteyne asserts that the U.N.’s practice in this area arguably indicates that human rights finally have been removed from the exclusive jurisdiction of states and lifted into the realm of international concern.<sup>34</sup>

There are some scholars and analysts who are persuaded by moral and humanitarian imperatives and consider US interventions as a benign useful venture. For instance, Clarke and Herbst in their publication *Learning from Somalia: The Lessons of Armed Humanitarian Intervention* cite the less political, and initially less controversial, intervention that took place in Somalia in 1992 as one driven by real humanitarian concerns.<sup>35</sup> The Somalia intervention began correctly as a humanitarian venture to provide starvation relief and stop human rights abuses in that country. The United Nations, with strong member support, had approved the mission after it had become impossible for relief agencies to function in the war-torn country. The United States then dispatched 37,000 troops to Somalia to keep food relief supplies out of the reach of the

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<sup>32</sup> Ermacora F, Human Rights and Domestic Jurisdiction, 124 Recueil des Cours 375, 436 (1968).

<sup>33</sup> Ibid

<sup>34</sup> Fonteyne JP, The Customary International Law Doctrine of Humanitarian Intervention: 4 Cal. W. Int’l L.J., pp.203, 204, 1974.

<sup>35</sup> Clarke and Herbst, Learning from Somalia: The Lessons of Armed Humanitarian Intervention, Global Forum, March, 1997, pp 32-5.



feuding warlords and distribute it to the starving population<sup>36</sup>. This is considered in their view a genuine humanitarian intervention. The ensuing civil war however later changed the nature of the intervention.

Using the case of Somalia one can argue that acceptance of humanitarian intervention reflects a fundamental value choice that justifies some degree of interference to ameliorate people's sufferings. According to Lillich, "a prohibition of intervention is not an absolute virtue and must be weighed against other values as well, for instance, the value of life."<sup>37</sup> Grotius too, the Dutch pioneer of international law, was among those who felt that international relations and international law ought to have a place for humanitarian intervention.<sup>38</sup> Similarly Fiore, writing in 1885,<sup>39</sup> asserted that, inaction and indifference of other states would constitute a selfish policy contrary to the rights of all; for whoever fails to take action does that not only to the detriment of the person directly affected but against all civilized society. Indeed, one could say that by the turn of the 19th century, the principle of humanitarian intervention as a philosophical concept was strongly embedded in intellectual discourse. Decades later, Jenks would insist that; 'the world community must recognize the need for external intervention in cases not

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<sup>36</sup> Brune, Lester H. The United States and Post-Cold War Interventions: Bush and Clinton in Somalia. Haiti and Bosnia, 1992-1998. Claremont, Calif., 1998 pp 15-23.

<sup>37</sup> Richard B. Lillich, Intervention to Protect Human Rights, 15 McGill L.J. 1969, p 205, pp 208-09.

<sup>38</sup> <sup>38</sup>Lauterpacht, The Grotian Tradition in International Law, 23 Brit. Y.B. Int'l L. 46, (1946), p. 46.

<sup>39</sup>P. Fiore, Nouveau Droit International Public (Charles Antoine trans., 1885), pp 524-525.

covered by the right of self-defense so defined in Article 51 of the U.N. Charter, in which the world interest or the conscience of mankind is involved'.<sup>40</sup>

## **Anti-interventionist arguments**

### *Anti-intervention Legalist views*

Some eminent scholars often expressed doubts as to the legal status of the doctrine of intervention. Thus, Winfield stated in 1924 that; whether humanitarian intervention is legal, must in the present state of practice be regarded as an unsolved point<sup>41</sup>. Other scholars like Lauterpacht also admitted that, the doctrine of humanitarian intervention has never become a fully acknowledged part of positive international law<sup>42</sup>. Of particular concern were the mixed motives with which states generally became involved in such intervention, as well as the real fear of abuse of such a doctrine. The cases of Panama and Iraq interventions among others are examples where motives were mixed and kept changing to suit certain positions and rationalizations.

Some of the questions that are posed by anti-interventionists include; does international law permit unilateral or collective resort to force in order to remedy a situation of wide-scale deprivation of the most fundamental human rights committed by a state against its own nationals, or by one state against the nationals of another state? The

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<sup>40</sup> Wilfred C J, *A New World of Law?* *J.Int'l Law* 30 (1969), pp 26-7

<sup>41</sup> P.H. Winfield, *The Grounds of Intervention in International Law*, 5 *Brit. Y.B. Int'l L.* 149, (1924),p. 162

<sup>42</sup> Lauterpacht, *The Grotian Tradition in International Law*, 23 *Brit. Y.B. Int'l L.* 46,(1946),p. 46.

basic issues in this debate thus posit the problem of sovereignty versus the protection of certain universal human rights. In modern history, the principle of sovereignty was established under the Treaty of Westphalia of 1648, which brought an end to the Thirty-Year War and a long period of destructive religious conflict in Europe. The principle of noninterference in the affairs of another state is viewed as a corollary of the more basic principle of sovereignty, which, at the same time, continues to lose some of its absoluteness through the application of the doctrine of humanitarian intervention.

The application of the doctrine of humanitarian intervention therefore becomes very controversial with respect with issues of sovereignty: the state practice to which advocates of the right of humanitarian intervention had appealed provided an uncertain base on which to rest such a right to intervene. Not at least this was because history had shown that humanitarian ends were almost always mixed with other less laudable motives for intervening, and because often the humanitarian benefits of an intervention were either not claimed by the intervening state or were only put forward as an ex post facto justification of the intervention. The absence of the express invocation of the right by the states did not however deter some writers like Hedley Bull from arguing that all or some right to humanitarian intervention should be permissible<sup>43</sup>. Writers like Bull ignored the General Assembly resolutions on the use of force which outlawed forcible intervention in absolute terms. The friendly Relations Declaration excludes the right to intervene and makes no provision for humanitarian intervention<sup>44</sup>. The definition of aggression

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<sup>43</sup> Bull, Hedley, ed. Intervention in World Politics. Oxford, OUP, (1984), pp 107-161.

<sup>44</sup> Lillich (ed), Humanitarian intervention and the UN (1974) GA Res 2625 (1970) and Gray 'The principle of Mon-use of force' in Lowe and Warbrick (eds). The UN and the principles of international law (1994), p.33.

provision that; 'no consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression' also supports this.

Scholars opposed to intervention insist that it is extremely doubtful if humanitarian intervention has survived the general prohibition of resort to force to be found in the United Nations Charter<sup>45</sup>. This view is supported by scholars like Brownlie<sup>46</sup>. The argument against a post-Charter doctrine of intervention proceeds from several angles. It is claimed that the U.N. Charter expressly prohibits the use of force or threats of force by states except in self-defense. No article of the Charter specifically mentions humanitarian intervention. In fact, international legal instruments subsequent to the Charter, including these cited above, have emphasized the point of nonintervention. Those instruments that have addressed the question of nonintervention make no distinction between intervention by a state acting unilaterally and intervention by a group of states acting in concert. In other words, if humanitarian intervention were unlawful, it would continue to be unlawful even if it were carried out by a group of states. During the 1963 Organization of American States General Assembly Debate on this question, the Mexican representative Gomez Robledo stated that; "Under Article 2 Paragraph 4 of the United Nations Charter, it was clear that the use of force was permissible in only two cases: enforcement action ordered by the Security Council under Article 42, and in

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<sup>45</sup> Ian Brownlie, International Law and the Use of Force by States J Int.L 342 (1963).pp 28-9.

<sup>46</sup> Ibid

conformity with Article 51, individual or collective self-defense in the event of armed attack."<sup>47</sup>

Another argument has also been made that it is hardly possible for such intervention to be carried out consistently with Article 2(7) without going against the territorial integrity or political independence of the state concerned. This is so because humanitarian intervention may involve a change of government or even secession, and thus the foreign intervention would have had to fundamentally influence the domestic political process and organization of the state. It is important to note here that Article 2(7) should not be confused with Article 2(4) with regard to the permissibility of intervention. Article 2(7) relates to the U.N. organization itself and precludes the organization from intervening in matters essentially within the jurisdiction of any state, with certain important exceptions regarding threats to peace, breaches of the peace, and acts of aggression.

Lillich, made his view on this as follows;

Two provisions make it very doubtful whether forcible self-help to protect human rights is still permissible under international law. In the first place, all states by Article 2(4) renounce 'the threat or use of force against the territorial integrity or political independence of any state' subject of course to the self-defense provision contained in Article 51. Secondly, Article 2(7) prevents intervention by the United Nations 'in matters which are essentially within the domestic jurisdiction of any state' except for the application of enforcement measures under Chapter 7.<sup>48</sup>

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<sup>47</sup>OAS Document- Inter-American Juridical Committee, Instrument Relating to the Violation of the Principle of Non-Intervention, Pan-American Union, General Secretariat, OAS, Washington DC, February 1959, CIJ-51.

<sup>48</sup> Richard B. Lillich, Intervention to Protect Human Rights, 15 McGill L.J. 205, (1969), pp 208-09.

Such views are buttressed by the important fact that the principle of intervention, which had wide acceptance by the time of the creation of the U.N., was not expressly provided for in the Charter in the matter of interstate relations but mentioned only with respect to the U.N. as an organization.

Concerned about the genuineness of some interventions, Finnemore poses the question of what interest intervening states could be pursuing when they undertake humanitarian interventions.<sup>49</sup> Two of her noteworthy conclusions are that 'humanitarian military intervention now must be *multilateral* to be genuine and legitimate', that norms regarding intervention are permissive rather than requiring intervention. She also brings in the issue of public opinion in, for example, US decisions to intervene for humanitarian purposes. She observes that force is favoured to insure US domestic and foreign interests.<sup>50</sup> She then argues that the political administration would invariably use the guise of humanitarian aid to attract positive public opinion.

***Anti-Moralists position; human rights cannot be used as a basis for intervention***

The Italian philosopher Mamiani, who was also described as the leader of the Italian "non-intervention" or "neo-nationalist" school of thought, claimed in 1880 that the actions and crimes of leaders within the limits of territory do not infringe upon anyone else's rights, and thus, do not give a basis for a legitimate intervention.<sup>51</sup> Truly

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<sup>49</sup>Finnemore; A Fresh Look at Humanitarian Intervention Under the Authority of the United Nations, 67 Ind. L.J. p.94

<sup>50</sup> Ibid

<sup>51</sup> Ermacora F, Human Rights and Domestic Jurisdiction, 124 Recueil des Cours pp 375, 436 (1968).

what positive right of the other peoples did the governments of Panama, Grenada, Nicaragua, Panama, and Italy infringe upon? One can ask. The 19th century British scholar Thomas Lawrence had the following view;

“The acts of inhumanity however condemnable they may be, as long as they did not affect nor threaten the right of other states, do not provide the latter with a basis for lawful intervention as no state can stand up in judgment of the conduct of others; as long as they do not infringe upon the rights of other powers or of their subjects, they remain the sole business of the nationals of the countries where they are committed.”<sup>52</sup>

Latin American scholars, traditional champions of the noninterventionist principle, took also the same approach in the early 20th century, for instance, J. Yepes, writing in 1930, postulated that; internal oppression, however odious and violent it may be, does not affect either directly or indirectly external relations, and does not endanger the existence of other states.<sup>53</sup> Accordingly it cannot be used as a legal basis for use of force and violent means. There is a fear that if humanitarian intervention was allowed on these grounds, it would give powerful states an excuse to intervene in the affairs of weaker states for selfish political purposes. It is argued that such a right might indeed open a Pandora’s Box, as there is no country that can claim a complete absence of human rights violations in its territory.

In brief, the position of the anti-interventionists is that, there is no right to humanitarian intervention under international law. This has been made clear by U.N. General Assembly resolutions, declarations, and assertions, as well as by frequent condemnation of states that have employed humanitarian arguments to justify their

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<sup>52</sup> Thomas Joseph Lawrence, The Principles of International Law, Boston (4th ed. 1910), pp 129

<sup>53</sup> Jose Maria Yepes, La Contribution de l’Amerique latine au développement du Droit International Public et Prive, 32 R.C.A.D.I, 1930, p.691

actions in the domestic affairs of other states. State practice, even if it does not support the absence of humanitarian intervention, does not in their view answer the question completely. In none of the dramatic and clearly humanitarian interventions in the 1970s and 1990s, particularly the US 1994 intervention in Haiti, the Tanzanian invasion of Uganda and the US invasion of Iraq in 2003, did the international community clearly recognize the actions as legitimate, even if they were not roundly condemned?

The review has examined various views by the pro-interventionist and anti-interventionist with regard the legitimacy of intervention in terms of moral and legal justifications. It is clear in the available literature that intervention is only legitimate when it is motivated by a massive violation of human rights and when the intervention is put in motion by an international body, typically the United Nations Security Council. There was no massive human rights violation in the countries that US intervened to form the basis for motivation. In the absence of this condition, there is need to investigate the motivation of US in these interventions. Further, the Chapter Seven powers of the United Nations Security Council are often used to legitimize intervention for stopping any threats to international peace and security. From the 1990s the understanding of what constituted threats to international peace were radically broadened to include such things as the movement and security of refugees, which justified intervention into Somalia and Yugoslavia.<sup>54</sup> In practice, humanitarian intervention actions are often carried out by coalitions of nations sanctioned by the UN on the basis of; the right to intervene, which constitutes *jus ad bellum*; a term coined by the philosopher Jean-François Revel in

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<sup>54</sup>Brune, Lester H. The United States and Post-Cold War Interventions: Bush and Clinton in Somalia, Haiti and Bosnia, 1992-1998. Claremont, Calif., 1998, pp 80-5.



1979.<sup>55</sup> This is the recognition of the right of one or many nations to violate the national sovereignty of another state but only when a mandate has been granted by a supranational authority like the UN. US interventions lacked the sanction of UN and involved change of governments. The need to investigate and establish how, without the sanction of the UN, US operations could be considered legitimate is important.

### **Hypotheses**

- a. Abuse of the doctrine of humanitarian intervention by US is due to its use of the military to pursue political self interest disguised as humanitarian.
- b. Change of regime and administrative structures by an intervening power is not an objective of humanitarian intervention.
- c. For a genuine humanitarian intervention the amount of force used should not be overly in excess compared to that required to stop violations of human rights.

### **The Theoretical Framework**

The study will use the basic framework of just war theory by James Turner Johnson<sup>56</sup> based on its central motivation. Just war theory is an attempt to distinguish

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<sup>55</sup> Abiew, F. K., The Evolution of the Doctrine and Practice of Humanitarian Intervention. Kluwer International, 1999, p. 97

<sup>56</sup> James Turner Johnson (Ph.D., Princeton, 1968) is Professor of Religion and Associate Member of the Graduate Department of Political Science at Rutgers. He has written several books amongst them, *Morality & Contemporary Warfare* that discusses the just war theory.

between justifiable and unjustifiable uses of organized armed forces. The just war tradition provides the best framework for discussing the moral and legal arguments for and against humanitarian intervention. This framework has two key structural supports, sometimes referred to by Latin tags: the jus ad bellum (abbreviated here to JAB) and the jus in bello (the JIB). The JAB is concerned with the moral justification for waging war, as contrasted with the provisions of the JIB, which address the morality of the methods employed in the war. Within the humanitarian context of this study, the JAB is of primary interest (although the JIB, too, can also be of interest, because immoral ways of waging war or intervention will often cast doubt on its over- all legitimacy).

The conditions of the jus ad bellum, especially that of just cause, are these days treated more restrictively than in past so that a just war has tended to be seen primarily as a defensive war. Military interventions in the affairs of other states without the warrant of self- defense or defense of allies were largely ruled out, both morally and legally. The older tradition of allowing certain aggressive wars to be morally licit fell into disrepute during the latter half of the twentieth century. The call for humanitarian war goes back to the older tradition and challenges the paradigm of outlawing all aggression of states against other states.<sup>57</sup> This challenge raises the question of the value of sovereignty, since the sovereign right of states to manage their own affairs has been a mainstay of international relations theory and has a direct connection with the prohibition on aggressive war. There are undoubtedly good reasons for being suspicious of any absolute right for states to remain immune to outside criticism, pressure, or sanction by the

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<sup>57</sup>Abiew, F. K., *The Evolution of the Doctrine and Practice of Humanitarian Intervention*, Kluwer Law International (1999), pp 57-69.

international community or even by other states. Human rights violations by states against their own populations certainly constitute one of those reasons.<sup>58</sup>

Nonetheless, the case against violent intervention cannot be dismissed merely by noting that sovereignty is not absolute. Warfare destroys lives, property, way of life, infrastructure, and environment in ways and to an extent that economic and diplomatic pressures do not. The case against military intervention through use of force has also to be seen in this light and against the background of just war thinking.

The relevant conditions of the *jus ad bellum* are those of legitimate authority, just cause, prospects for success, last resort, and proportionality. Assuming, for the sake of this study, that the condition of right intention was met, the other conditions need to be scrutinized for their pertinence to the issue of humanitarian intervention. If these were to be accurately done, advocates of armed humanitarian intervention might have to be a little cautious. In particular, the requirement of legitimate authority creates concerns about the appropriate authorizations for humanitarian intervention and about the effect and role of a dominant superpower. The requirement of last resort raises issues about the need to explore alternatives to violent intervention, and the demands of proportionality require a clear assessment of the magnitude of wrong committed against the strength of

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<sup>58</sup>Wheeler, N J, Saving Strangers: Humanitarian Intervention in International Society. Oxford ,OxfordUniversity Press, 2002 p.109

response, for instance human rights violations need to be extreme, on large scale and with widespread international condemnation to attract military intervention.<sup>59</sup>

There is a concern about the circumstances in which intervention should be morally and legally be justified. Further there is also concern about legitimacy in the international order and the role of the United Nations; the need for holistic measures in the management of intervention; the significance of multilateral versus unilateral forms of intervention; the need for a specialist UN intervention force; and the problems posed by demonization of small states by the big powers all need to be considered. The need to genuinely justify humanitarian intervention is therefore important.

### **Research Methodology**

This study will be based on secondary and some primary sources of data. The study will seek to interview experts in the subject who are analysts, writers and commentators. Opinions and views of these people will be sought through unstructured personal interviews. Here the study will be seeking opinions of experts on whether there abuse or good use of the doctrine of humanitarian intervention. Critical in this source data is the consistency of various views. Other sources will include documented sources such as the UN Charter and other relevant UN conventions that focus on human rights and the inviolability of sovereignty, for instance, article 2(4), 2(7) of the UN charter and the 1970 “General assembly declaration of principles of international law concerning friendly relations and cooperation among states”. The study will also seek data from various UN

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<sup>59</sup> Lyal S. Sunga, "The Role of Humanitarian Intervention in International Peace and Security: Guarantee or Threat?." The Use of Force in International Relations: Challenges to Collective Security, Int'l Progress Organization & Google Books 2006, pp. 41-79.

commissions that relate to issues on humanitarian intervention, for instance, the ICSS (The international Commission on Intervention and State Sovereignty) report of 2000. As part of the documented primary source, this study will seek information on US intervention policy by studying US domestic and foreign policy documents. Similar information will also be sought from sources like, the encyclopedia on US foreign policy and domestic policy. Other sources will include available literature by scholars like Sarah Ramage and Lori Damrosch who interpret and critique US foreign policy. Views of writers like Eytan on US interventions will be useful in the report analysis. Eytan`s book on Panama invasion 'Lessons Learnt' will provide useful data on 1989 Panama intervention among other sources. The nature of the study does not allow good use of sampling techniques. However the choice of US as a case study is one way of attempting purposive sampling procedure. This is because US as a super power has been involved in most interventions around the world.

Other sources of secondary data will include scholarly works from the world of academia, library books on the subject, articles, scholarly journals, newspapers, magazines, periodicals and internet among others. Walter McDougall`s analysis of US foreign policy trends and his conceptions on "The Bible of the American Foreign Policy" will be useful in relating the evolution of the doctrine of humanitarian intervention to the evolution of US policy. The study will also seek to present the legal and moral positions/interpretations by analysts and commentators on the subject. To capture this, the research will consult scholarly law journals and reviews by lawyers in US and the rest of the world together with the views of religious groups like bishops. In this regard views

of US catholic bishops will be sought to capture their position from the moralists' perspective. The bishops will be taken as a sample to represent religious groups. An examination of their pronouncements through pastoral letters will be made. Magazines on ethics and morality will also be consulted to seek other religious views from other sects.

The study will also seek sources from internet sites to gather data on positions taken by various analysts, journalists, statesmen, and institutions on the subject. Positions of human rights groups in their periodic reports will be sought, as well as those of world leaders expressing their views on intervention and in particular the ongoing US/Iraqi conflict. Scholars who have taught on the subject and related issues of US policy will be sought to express their with respect to the subject. It is hoped that their availability for consultation will be possible to enrich the exercise.

The findings from data collected will be analyzed to establish whether there is a relationship between US activities during and after the intervention and the claimed objectives of the intervention. In this analysis the study will examine the stated reasons for intervention and compare them with actual activities the US got engaged in while on the ground. The study will also find out whether there is a link between motivation for intervention and US political interests in the victim country or region in which the country is located. The study will also use the findings to establish the legitimacy of US intervention from a UN and moral perspective.

This study will be covered in five chapters as follows;

**Outline;**

Chapter 1 is the introduction and provides the study setting. It will discuss the

problem and establish a case that there is need to carry out a study on the application of the doctrine humanitarian intervention and determine the objectives of the study. It will also establish the framework of analysis and come up with the hypothesis. In the literature review section, various issues that have been addressed by different scholars are examined. This examination identifies gaps in previous works on the subject and establishes the need to conduct more research to determine whether there is use or abuse of the doctrine of humanitarian intervention by US.

Chapter 2 examines the evolution and development of the doctrine of humanitarian intervention in international relations. The chapter will look at arguments of early Greek philosophers about the laws of nature to show how natural law gave rise to the concepts of just law and humanitarian intervention. It will also seek to find out what theologians like Thomas Aquinas and St. Augustine had to say about eternal law and its relations with the good of the society to help relate these theories to the practice on humanitarian intervention today. This will be followed by an examination of the contemporary debates on the doctrine on the basis of law and morality.

Chapter 3 will examine the evolution of US policy on intervention and how this policy has been changing with respect to the changing dynamics of the international political environment. The evolution will trace policy trends since independence through the war period, cold war and today. This will be followed by the discussion of US intervention activities in the post world war 2 period to today in chapter 4. The study will select a few cases of US intervention experiences that should provide adequate sample for the study. Amongst those to be sampled will include cases of Somalia, Grenada, Kosovo, Panama and Iraq-2003. Assessment of whether these activities constituted use or

abuse of the doctrine will be made in this chapter. The decision to intervene is motivated by various factors such as humanitarian and political interests in the victim state. This chapter will look at US external political interests and assess how they influence US decisions to intervene abroad. Finally chapter 5 will highlight key points of the analysis in the study and make conclusions on use or abuse of the doctrine of humanitarian intervention followed by some recommendations.



## CHAPTER TWO

### EVOLUTION OF THE DOCTRINE OF HUMANITARIAN INTERVENTION

This chapter seeks to first, trace the evolution of the doctrine of humanitarian of humanitarian intervention from the theories of the law of nature in the early A.D era through the practice of the post Westphalia system of states to the early 20<sup>th</sup> century and secondly, examine the contemporary debates on the subject from the post World War II period to the present. The chapter explain the origins and rationale for the doctrine that should provide a framework for discussion of US intervention in the later chapters.

#### **Evolution and conceptualization of the Doctrine of Humanitarian Intervention**

##### *Early Periods of history*

Historically the concept of humanitarian intervention always existed. In the early stages of western culture, Greek philosophers argued that there existed a universal law of nature which everybody was obliged to obey and all positive laws had to conform to. Aristotle (384-322 BC) for example in this period writes: "...one part of what is politically just is natural, and the other part legal. What is natural is what has the same validity everywhere alike."<sup>1</sup> Stoicists somewhat later developed a coherent theory of the law of nature. They saw natural law as built into the structure of the universe directing all actions of all rational beings. The law of nature was therefore universal and applied to all human beings alike.<sup>2</sup> It formed the philosophical foundation of several basic moral

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<sup>1</sup>Natali C, Aristotle's Nicomachean Ethics: Book 7. symposium Aristotelicum, Oxford University Press, 2009, pp 199-215.

<sup>2</sup> Ibid

and legal principles and inherent in the human rights laws. In this context, natural law became the most fundamental source of ideas concerning humanitarian intervention and has remained its basis ever since.

Deriving from natural law, humanitarian intervention gave rise to concepts like just war (*bellum justum*). St Augustine for example was the first theologian to speak of a permissible, just war. He attempted to bridge the disconnect between the Christian ideal of pacifism and the political reality of war, by introducing a set of criteria that would make the waging of war a justifiable act.<sup>3</sup> St Thomas Aquinas (1225-74 A.D) writing after Aristotle produced a powerful philosophical synthesis between Greek philosophy and Christian theology, he argued that God had laid down eternal law directing all things to act for the good of the community of the universe and part of this eternal law was natural law which God had inscribed in the minds of every human being.<sup>4</sup> Aquinas attempted to limit the Christian pacifists command from the bible which seemed to prohibit all kinds of war by arguing that there is no general valid objection to the act of waging war, but for war to be just, it had to meet certain requirements. First it had to be waged by a competent authority, second, there had to be a just cause and finally it had to be waged with the right intention. 16th Century philosophers such as Vitoria, Suarez and Gentili while acknowledging pacifism as a possible moral interpretation of the Bible argued that the theory was wrong because God never willed the evils against which war was waged but merely permitted them hence God never forbade their repulsion. From

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<sup>3</sup> The New Catholic Encyclopedia (New York: McGraw-Hill, 1967) vol.14. R..A McCormick, 'Morality of War' In New Catholic Encycloedia, p.803.

<sup>4</sup> Summa Theologica (1260) L.R.B Walters, Five Classic Just War Theories: A study in thought of Thomas Aquinas, Vitoria Saurez, Gentili and Grotius, Michigan University Microfilms

this it was deduced that denying the right of innocent passage at sea, piracy and killing of innocent humans were just causes for war.<sup>5</sup>

### ***Post Westphalia Treaty Period***

Writing in 17th Century Hugo Grotius (international law pioneer) detached the law of nature from God. While not dismissing God in its entirety he used God as an explanatory factor lending validity to natural law. According to Grotius man is a social animal (*zoon politikon*) and that man strives to live in harmony with his fellow humans. The individual and his natural rights are thus at the core of the law. Therefore if an individual's basic rights are violated, not only is this individual himself, but every other person is entitled to use force to secure these rights. Grotius therefore argues that if the sovereign violated the basic rights of his people, he had exceeded his jurisdiction and other states were entitled to intervene to restore the Law of Nature.<sup>6</sup>

Hans Kochler<sup>7</sup> notes that despite these early writings by legal philosophers like Hugo Grotius, Emer de Vattel and Samuel Pufendorf<sup>8</sup> the concept of humanitarian intervention in its earnest gained ground in the context of Oriental European policies during the 19th century. During this period an elaborate doctrine of humanitarian

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<sup>5</sup> Summa Theologica (1260) L.R.B Walters, Five Classic Just War Theories: A study in thought of Thomas Aquinas, Vitoria Saurez, Gentili and Grotius, Michigan University Microfilms

<sup>6</sup> Hugo Grotius, 'The Law of War and Peace'. Carnegie Foundation for International Peace, 1925, pp 113-5.

<sup>7</sup> Hans Kochler, 'Humanitarian Intervention in the Context of Modern Power Politics', International Progress Organization, Vienna, Kohlmarkt 4. online: [www.i-p-o.org/humanitintervention.html](http://www.i-p-o.org/humanitintervention.html).

<sup>8</sup> De jure belli pacis ,1625, Le droit des gens, 1758, de jure naturae et gentium, 1694 respectively

intervention evolved to provide a kind of moral justification for the repeated intervention of European powers on the territory of the Ottoman Empire which was by this time rapidly disintegrating causing a great deal of concern to European powers. In the context of European power politics, however, humanitarian intervention in other states was anchored on the contention that any government though acting within the limits of its sovereign rights which violate the rights of humanity whether by measures contrary to the interests of other states, or by excesses of injustice and cruelty that deeply injured European-Christian interests, could not lay claim to its right of sovereignty. The European states in this context thus developed some sort of law of solidarity based on the notion that states are not isolated entities free to act in whatever manner within the confines of their sovereignty but were members of a higher community of nations. The doctrine of humanitarian intervention has remained an integral part of European powers' conduct of foreign policy until the First World War. Antoine Rougier for instance writes about a diplomatic note addressed to the Sultan of Morocco in which the European powers' signatories to the General Act of Algiercas of 1906 demanded of him to stop the alleged practice of "cruel punishment" and in future observe the laws of humanity.<sup>9</sup>

The early phases of the doctrine of humanitarian intervention while claiming to be inspired purely by humanitarian motives were in reality underpinned by European imperialist agenda. As Hans Kochler aptly observed, its actual practice in the 19th Century was dictated by the geopolitical interests of the then European powers.<sup>10</sup> While

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<sup>9</sup> Rougier A, MAROC, 'La question de l'abolition des supplices et l'intervention européenne', in Revue générale de Droit International Public. Vol. 17 (1910) p.99

<sup>10</sup> Freedman, Lawrence, ed. Strategic Coercion: Concepts and Cases. Oxford and New York, 1998, pp. 102-

insisting on respect for rights of Christian minorities under the Ottoman Empire, they accepted no similar standards with regard to populations under their control in the colonies at that time, who they regarded as barbarian. The Eurocentrism of the 19th century therefore regarded Christianity as superior to all other religions and common principles of humanity were construed in the context of Christian dogma. The doctrine was during this period regarded as the natural outflow of the European powers tendency to camouflage their imperialist motives in niceties of religious precepts. The unavoidably Eurocentric orientation and the direct link to the hegemonic interests of the 19th Century European society made humanitarian intervention suspicious in the eyes of legal theorists who saw its use as a tool of power politics. <sup>11</sup>

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### **The Contemporary Perspectives**

There are various perspectives on the debate about the application of the doctrine of humanitarian intervention. These debates revolve around two main views; the legalist and the moralist perspectives. The legalists make their case on the basis of law while the moralists argue that it is the duty and obligation of humans to protect other humans from violations of human rights by others. This section will discuss positions of both perspectives in a contemporary sense followed by an examination of a religious view based on the moral theory of just war using the case of US catholic bishops.

#### ***The legalist perspective***

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<sup>11</sup> Rougier A, 'La Theorie de l'intervention' in: Revue generale de droit International Public vol.17 pp 221-222.

As discussed earlier in this paper, the issue that underlies the debate over whether humanitarian intervention is defensible or not is the perceived tension between the values of ensuring respect for fundamental human rights and the primacy of the norms of sovereignty, non-intervention, and self-determination which are regarded as the cornerstones for the maintenance of international peace and security. These values are contained in the Charter of the United Nations as the fundamental purposes for which UN was formed.<sup>12</sup> Article 2(4) decrees that member states do refrain in the conduct of international relations, from threat or use of force against the territorial integrity or political independence of any state.<sup>13</sup> Further, Article 2(7) of the Charter implicitly prohibits intervention by articulating that: “nothing contained in the present Charter shall authorise the UN to intervene in matters which are essentially within the domestic jurisdiction of any state. This principle shall however not prejudice the application of enforcement measures under chapter VII”. This general prohibition on the use of force has been confirmed by the International Court of Justice in the *Corfu Channel Case* (1949)<sup>14</sup> and the *Case Concerning Military and Paramilitary Activities In and Against Nicaragua* (1986)<sup>15</sup> where it was decided that article 2(4) was a codification of customary international law. The two main exceptions to this general prohibition are the right of a state to use force in self defence or collective self defence under article 51 and the right of the Security Council under article 42 to authorize the use of force to maintain or restore international peace and security.

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<sup>12</sup> UN Charter Article 1

<sup>13</sup> Ibid

<sup>14</sup> ICJ Report No.3, 1949, p.4

<sup>15</sup> ICJ Report No.16, 1986 p14

What then exactly is sovereignty? Simply put, sovereignty is the legal independence of all states or international organs. The formal structure of the international state system is built on the principle that each state is autonomous and independent and has the right in its internal affairs to be free from acts of coercion committed or assisted by other states. According to this doctrine every state has the right to independence and hence to exercise freely without dictation by any other state, all its legal powers including the choice of its own form of government. According to the UN Charter violation of the doctrine of sovereignty constitutes a threat to international peace and security and is subject to sanction by the UN Security Council as was the case in the 1990 Iraq invasion of Kuwait. UN Security Council resolution 678 authorized use of force to restore Kuwait sovereignty.<sup>16</sup> The doctrine of sovereignty further permits a state to exercise jurisdiction over its territory and over all persons and things therein subject to the immunities recognised by international law.<sup>17</sup> The concept of state sovereignty therefore implies that a state cannot be ruled from an external source, but that the main decisions about its actions must come from within it.<sup>18</sup> From the foregoing it clearly emerges that the fundamental problem regarding humanitarian intervention lies in its inherent breach of the principle of sovereignty. In legal terms therefore legal scholars have for a long time narrowly interpreted the concept of international peace and security as stipulated under article 51 to refer only to the maintenance of inter-state as opposed to

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<sup>16</sup>UN Security Council Resolution 678

<sup>17</sup> Articles 1 & 2 International Law Commission (ILC) Draft Declaration on Rights and Duties of States (1949), [www.un.org/law/ilc/convents.htm](http://www.un.org/law/ilc/convents.htm)

<sup>18</sup> M. Malan, 'The Principles of Non-interference and the future of multinational Intervention in Africa', *Africa Security Review* No. 6/3 (1997) pp32-33 online: [www.iss.co.za/Pubs/ASR/6No3/Contents.html](http://www.iss.co.za/Pubs/ASR/6No3/Contents.html)

intrastate order.<sup>19</sup> The rationale for the principle of sovereignty was aimed at assuring member states of the UN that their sovereign rights are respected and that they would never become targets of intervention.<sup>20</sup>

Arguably no principle is more sacrosanct in the modern concept of international order based on the state system than the inviolability of the borders of a sovereign state. Clearly visible in the assumptions that underlay European balance-of-power politics during much of the nineteenth century, in the twentieth century, this principle has become embedded in positive international law, where it underpins the idea of jus ad bellum narrowed to the concept of national defense. This idea is a fundamental element in the "legalist paradigm" of international order, which can be defined by means of six propositions:

- a. There exists an international society of independent states.
- b. This international society has a law that establishes the rights of its members-above all, the rights of territorial integrity and political sovereignty.
- c. Any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act.

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<sup>19</sup> Penelope C. Simmons, 'Humanitarian Intervention: A Review of Literature', Ploughshares Working Paper, 02-3

<sup>20</sup> R. Falk, 'The new interventionism and the Third World', Current History, 98/631 November, 1999. p.370



d. Aggression justifies two kinds of violent response: a war of self-defense by the victim and a war of law enforcement by the victim and any other member of international society.

e. Nothing but aggression can justify war.

f. Once the aggressor state has been repelled, it can also be punished.

However developments in international law can no longer sustain the non-interference principle. There appears to be a rapid shift towards a more circumscribed interpretation of the sovereignty doctrine. Those who argue in favour of intervention maintain that the evolution of international human rights law and the Charter of the UN place the individual and not the state at the centre of international law. According to this school of thought states receive their legitimacy from the will of the people hence sovereignty is not an inherent right of states but rather derives from individual rights. Thus where state sovereignty comes into conflict with human rights, the latter must prevail. Richard Falk for instance argues as follows:

“The human rights imperative underlies the concepts of state and government and the precepts that are designed to protect them. The rights of states recognized by international law are meaningful only on the assumption that those states minimally observe individual rights. The United Nations purpose of promoting and protecting human rights found in article 1(3) and by reference in article 2(4) as a qualifying clause to the prohibition of war has a necessary primacy over the respect for state sovereignty. Force used in defence of fundamental human rights is therefore not a use of force inconsistent with the purpose of the United Nations”<sup>21</sup>

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<sup>21</sup> Falk R, 'The New Interventionism and the Third World', Current History. 98/631 November, 1999. p.370

The underlying assumption in the argument is that human rights constitute self-evident truth and a natural law which has primacy over any notion of state sovereignty or positive international law. Humanitarian intervention in this context is regarded as a right that comes into being when a state renders itself guilty of cruelties and persecution of its nationals in such a way as to deny their fundamental rights.<sup>22</sup> The central argument here is that the interests of humanity in these circumstances outweigh the prohibition on intervention. The Charter of the UN is therefore being interpreted away from an exclusive focus on sovereignty and more towards an emphasis on balancing sovereignty with human rights. The shift towards individual oriented interpretation of the Charter has been brought about by the adoption of international conventions for the protection of human rights. The argument here is that, to the extent that a state has ratified these documents on human rights and humanitarian law, such issues no longer belong to the exclusive domain of the state.<sup>23</sup>

### *The moralist perspective*

This section will discuss the justification and limits of internal conflicts by military, drawing on just war thinking about the proper nature of statecraft and conditions for justified use of military force in the service of statecraft. The study will make reference to explicit just war reasoning directed to the question of intervention. Two references will be used; that of political philosopher Michael Walzer's chapter on

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<sup>22</sup>.Barrie G, ' International Law and forcible intervention: A Millennium Assessment' in L.Du Plessis & M. Hough (eds) 'Managing Africa's Conflicts: The challenge of military intervention'. HSRC: Pretoria (2000),pp 142-8

<sup>23</sup> Hugo Grotius, 'The Law of War and Peace'. Carnegie Foundation for International Peace, 1925, pp 113-5

"Interventions" in his 1977 book *Just and Unjust Wars*; and that of the United States Catholic bishops in their 1993 statement on peace and war.<sup>24</sup> These discussions mark earlier stages in major moral debate over intervention by the United States. It is a moral analysis and arguments about the problem of intervention in general. The position of the United States Catholic bishops specifically addresses the current context, but is heavily influenced by conceptions framed in the cold war context. All the two arguments explicitly connect to just war tradition, though the ways they use that tradition differ considerably. Together they embody some of the most serious just war-based thinking about the problem of intervention in the post UN Charter.

"It is the wrong-doing of the opposing party which compels the wise man to wage just wars," wrote the Christian theologian Augustine of Hippo<sup>25</sup> early in the fifth century in *The City of God*. Later just war tradition, citing another work of Augustine's, explained what this would mean, leading to the fundamental concept of just cause for the use of force as defined by the need for defense or for vindictive justice. What is most fundamental in this conception of just cause is that it justifies the use of force not out of self-interest but for the sake of others: those who are in need of defense or who have suffered wrongs needing to be righted in line with the current conceptions of humanitarian intervention. The nature of this obligation was, for many during the formative period of just war thought, encapsulated in a much-quoted statement by the

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<sup>24</sup> Johnson J T, *Morality & Contemporary Warfare*. New Haven: Yale University Press, 1999, pp112-166.

<sup>25</sup> Augustine of Hippo was a philosopher, theologian, and a bishop of the North African city of Hippo Regius for the last part of his life. He is one of the most important figures in the development of Western Christianity, and is considered to be one of the church fathers. He framed the concepts of original sin and just war.

fourth-century Christian theologian Ambrose of Milan, the mentor of Augustine: "He who does not keep harm off a friend, if he can, is as much in fault as he who causes it."<sup>26</sup> The idea of the *jus ad bellum* developed out of this conception of an obligation to defend the neighbour, by force if necessary. The moral justification for intervention is grounded in a concern for justice focused on setting right wrongs done to others who are not able to prevent such injustice on their own. This is the spirit that supposedly informs the actions of those who violate the principle of territorial integrity in the application of the doctrine of humanitarian intervention.

Among the *prima facie* obligations that the principle of territorial integrity imposes on states is non-intervention across the borders of other states. Thus Walzer<sup>27</sup>, in the opening sentence of his chapter on "Interventions;" links the general requirement of non-intervention to the legalist paradigm, going on to argue that intervention by military force is almost always forbidden, yet may be justified in certain exceptional cases by precisely the same fundamental values that give rise to this paradigm. Hence it can be argued, "those conceptions of life and liberty which underlie the paradigm and make it plausible, seem also to require that we sometimes disregard the principle of non-intervention"<sup>28</sup>. Specifically, it can be argued that there are three sorts of cases in which the prohibition of cross-border uses of military force does not "seem to serve the purposes for which it was intended": (a) intervention in civil wars involving states in which there are two or more political communities, when one community resorts to force

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<sup>26</sup> Richard Sorabji; David Rodin; The Ethics of War : Shared Problems in Different Traditions. Aldershot, VT : Ashgate, 2006, p 23-28.

<sup>27</sup> Walzer M, Just and Unjust Wars: A Moral Argument with Historical Illustrations (Basic Books, [3rd edition]2000), p.86

<sup>28</sup> Ibid

for the purpose of secession or "national liberation and (b) intervention to counter extreme violations of human rights by fighters in the course of an armed conflict or by a government against its people. Cross-border uses of military force which are undertaken for one or more of the above reasons constitute exceptions to the prima facie rule against such intervention. Yet it should be noted that the justification for intervention in each of these cases also carries with it limits on the actions that may be taken.

One of Walzer's category of cases that may justify intervention is a situation in which there are grave violations of human rights against a certain group of people, for instance, the genocide that was being committed in Bosnia by serbs against the Muslims. About 200,000 Muslims were killed.<sup>29</sup> Such intervention would be justified as a humanitarian intervention. Here, he says, " we don't want the local balance to prevail:<sup>30</sup> This is not a case in which the argument for self-determination can be applied, since the oppression may be so great that what is at stake is much more fundamental: "the bare survival or the minimal liberty" of significant numbers in a given political entity. Against the enslavement or massacre of political opponents, national minorities, and religious sects, there may well be no help unless help comes from outside. And when a government turns savagely upon its own people, he stresses, 'we must doubt the very existence of a political community to which the idea of self-determination might apply'<sup>31</sup>.

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<sup>29</sup>Pasic, Amir, and Thomas G. Weiss. "The Politics of Rescue: Yugoslavia's Wars and the Humanitarian Impulse." Ethics and International Affairs 11 (1997),p.87-91

<sup>30</sup>Michael Walzer, Just & Unjust Wars: A Moral Argument with Historical Illustrations (2d ed. 1992).p.87

<sup>31</sup>Ibid

This states the moral justification for intervention very clearly; it is "vindictive justice" in a nutshell. However tests, need to be applied to empirical interventions to determine whether a claimed humanitarian purpose is in fact being served: who the targets of the intervention are, how destructive it is of the society in question, how quickly the intervening force withdraws after ending the humanitarian violations. Presumably, the prudential tests identified earlier should also apply. One consideration that Walzer does not believe in is whether the intervention should be unilateral. The legalist paradigm indeed rules out such efforts, but that only suggests that the paradigm, unrevised, fails to account for the moral realities of military intervention.

### ***Religious views- United States Catholic Bishops on Intervention***

In their influential 1983 pastoral letter, *The Challenge of Peace*,<sup>32</sup> which focused on the problems of war and peace in the nuclear age, the Catholic bishops of the United States did not address the subject of military intervention. Their focal concern was the possibility of international war, which they regarded as terrible enough if conventional, but which, if it involved the superpowers or their allied blocs, they expected would be a nuclear holocaust<sup>33</sup> While they referred their judgments to the moral theory of just war in Catholic tradition, they argued that this theory begins with a presumption against war<sup>34</sup>. While they denounced aggressive use of military force and accepted the right of defence,

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<sup>32</sup> Catholic Bishops –USA; Pastrol letter, *The Challenge for peace*, May 1983 Johnson, in James Turner, Morality and Contemporary Warfare (Yale Univ. Press, 1999),pp 93-6

<sup>33</sup> The Ethics of War, Religion & Ethics News. Transcript of Panel Discussion, 23 April 2003 & Johnson, James Turner, Morality and Contemporary Warfare (Yale Univ. Press, 1999).

<sup>34</sup> Martin L.Cook, Christian Century. Jan 2000,Review of Johnson's Morality & Contemporary Warfare

they sought to define non-military means of defence, including reliance on non-violence. In a major section on the promotion of peace, they identified as critical the need for arms control and disarmament, efforts to minimize the risk of "any war;" civil defence, non-violent means of conflict resolution, and the strengthening of world order. There was no major section on the possible use of armed force for the promotion of justice in this pastoral letter.

In November 1993, as a "reflection" on the tenth anniversary of the 1983 pastoral letter, the National Conference of Catholic Bishops issued a new statement on war and peace, 'The Harvest of justice Is Sown in Peace'<sup>35</sup>. Beginning with a "Call to Peacemaking in a New World, the statement included three major sections, headed by references to "peace," "peacemaking," and "peacemakers" respectively. The just war tradition is invoked, and its criteria listed, but non-violence is explicitly acknowledged as a parallel tradition in Catholic thought<sup>36</sup>. All these elements of the 1993 statement are reminiscent of concerns voiced in the 1983 pastoral. But in significant respects the tone and content of this new statement are quite different. In the second section the discussion begins by calling attention to a "challenge" by Pope John Paul II to the international community singling out the cause of justice as linked to peace; it then defines an activist list of what needs to be achieved in the service of these values: securing human rights, assuring sustainable and equitable development, restraining nationalism and eliminating religious violence, building cooperative security, and shaping responsible leadership by the United States, as the pre-eminent world power. The large subsection on cooperative

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<sup>35</sup> Catholic Bishops –USA; Pastrol letter, The Challenge for peace, May 1983 Johnson, James Turner, *Morality and Contemporary Warfare* (Yale Univ. Press, 1999),pp 93-6.

<sup>36</sup> Ibid

security devotes considerable space to a topic that nowhere appeared in the 1983 pastoral letter: humanitarian intervention. It is the bishops' description of this item and the responsibilities it entails that concern this study.

"Humanitarian intervention," as defined by the bishops, is "the forceful, direct intervention by one or more states or international organizations in the internal affairs of other states for essentially humanitarian purposes; including alleviating internal chaos, repression and widespread loss of life<sup>37</sup>: the aim of such intervention is "to protect human life and basic human rights" in such contexts. Such intervention, the statement continues, has been termed "obligatory" by Pope John Paul II "where the survival of populations and entire ethnic groups is seriously compromised." Under such circumstances, the Pope sees it as "a duty for nations and the international community"<sup>38</sup>.

This is extraordinarily broad, strong language and especially in contrast with the denunciations of the use of military force for purposes of national interest that had become commonplace in twentieth-century Catholic thought.<sup>39</sup> The 1993 statement continues with a further quote from John Paul II: when diplomatic and other procedures short of force have failed, and nevertheless, populations are succumbing to the attacks of an unjust aggressor, states no longer have a "right to indifference." It seems clear that their duty is to disarm the aggressor if all other means have proved ineffective. The

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<sup>37</sup>Religion & Ethics News, Catholic Bishops- Transcript of Panel Discussion, 23 April 1993

<sup>38</sup> Ibid

<sup>39</sup>Catholic Bishops –USA; Pastrol letter, The Challenge for peace, May 1983 Johnson, James Turner, Morality and Contemporary Warfare (Yale Univ. Press, 1999),pp 93-6



principles of sovereignty of states and of non-interference in their internal affairs cannot constitute a screen behind which torture and murder may be carried out.<sup>40</sup>

This is language comparable to Walzer's explicit justification of humanitarian intervention discussed above. Activist in tone and substance, it repeatedly identifies intervention in such instances as an obligation not only for the international community but also for individual states. In the addresses from which the quoted passages are taken, the Pope clearly had in mind the context of contemporary local armed conflicts in which the suffering of non-combatant populations had multiplied and in which, in some cases, non-combatant populations had been targeted as a means of making war. The American bishops themselves listed the particular conflicts where such need existed and where, accordingly, intervention seemed justified: "Haiti, Bosnia, Liberia, Iraq, Somalia, Sudan and Rwanda"<sup>41</sup> a list of such conflicts that has continued to grow.

From the papal statements the American bishops identify "several concerns" which they adopt as the core of their own position: first, "human life, human rights and the welfare of the human community" have a moral priority; second, sovereignty and non-intervention are not absolutes; third, non-military forms of intervention take priority over military ones; fourth, military intervention may nonetheless be justified "to ensure that starving children can be fed or that the whole populations will not be slaughtered," aims that "represent St. Augustine's classic case of; "Love may require force to protect

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<sup>40</sup>Johnson, James Turner. Morality & Contemporary Warfare. New Haven: Yale University Press, 1999.

<sup>41</sup> Ignatieff, Michael, The Warrior's Honor: Ethnic War and the Modern Conscience (Metropolitan Books, 1998).

the innocent"<sup>42</sup>; and finally, that the right to intervene must be judged in relation to the effort to strengthen international law and the international community.

The bishop's comment of the right of military intervention already grounded in Augustine's fundamental justification of the moral right to employ force. Of the concluding concern that intervention should be related to the goal of a strengthened international order, they call for more explicit language on intervention in international law and the development of effective mechanisms through which intervention can operate, and they express a preference for "multilateral interventions under the auspices of the United Nations" as opposed to unilateral actions.

If all the above considerations are taken into account, the bishops conclude; Humanitarian intervention need not open the door to new forms of imperialism or endless wars of altruism, but could be an exceptional means to ensure that governments fulfil the purposes of sovereignty and meet the needs of their people.<sup>43</sup> Along with the implicit and explicit references to just war tradition made earlier, this concluding statement makes clear that the bishops do not understand the position advocated as simply "altruism" but in accord with the interests and purposes of political order rightly understood. Their language reflects that of earlier just war thinkers like Walzer:<sup>44</sup> sovereignty-that is, political authority-is justified only insofar as it serves the common good of the people governed. Assumed here is the implication: that the national common good is linked to the international, and that the good of one people is

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<sup>42</sup> Ethics of War, in Religion and Ethics Monthly, Christian Journal, April 2003, pp 13-5.

<sup>43</sup> Johnson, James Turner. Morality & Contemporary Warfare. New Haven: Yale University Press, 1999, pp.31-5

<sup>44</sup> Michael Walzer, Just & Unjust Wars: A Moral Argument with Historical Illustrations (2d ed. 1992), p.86

not distinct from that of another. In any case, the United States Catholic bishops agree on a conception of statecraft as defined by just war tradition, in which idealism and realism are not distinct, but according to which the proper interests of statecraft follow from the fundamental values which government exists to serve.

The 1993 general statement of the National Conference of Catholic Bishops was preceded and has been followed by various statements from individual representatives of the Conference. A striking example is the letter of Archbishop John Roach, head of the bishops' International Policy Committee, to Secretary of State Warren Christopher in May 1993<sup>45</sup>, calling for military intervention in Bosnia. Roach argued that "the United States, with the United Nations and other international bodies," confront a "moral imperative, to protect the lives and basic rights of the people of Bosnia." Intervention would also, continued Roach, serve national interests of various sorts: it would prevent the war from widening, avert a worsening refugee crisis, strengthen international order, and discourage other conflicts based on militant nationalism or ethnic feeling. The intervention should be in accord with just war principles, to make possible the diplomatic achievement of an "enforceable and enforced political settlement" and "political reconstruction;" with "a commitment to democracy and basic human and minority rights."<sup>46</sup>

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<sup>45</sup> Noam Chomsky, The New Military Humanism: Lessons from Kosovo (Monroe, ME: Common Courage Press, 1999), pp 235-9.

<sup>46</sup> Johnson, James Turner. Morality & Contemporary Warfare. New Haven: Yale University Press, 1999

The position staked out by Archbishop Roach here clearly anticipates the position taken later by the United States bishops as a body. It differs inexplicitly linking military intervention to the later processes of a peace settlement, political rebuilding, and the goal of a democratic society respectful of rights; but these latter goals also appear in various places and various forms in the formal statement of the National Conference of Catholic Bishops. Fundamentally, the Roach letter urging intervention in Bosnia represents a concentration and particular application of the general position on justified intervention taken in the latter statement. Together, these two and the 1993 statements<sup>47</sup> illustrate how contemporary Catholic thought has come to understand military intervention as sometimes an obligation that follows from the terms of the just war tradition, a position that contrasts sharply with earlier scepticism that military force could ever be employed justly in the contemporary world.

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<sup>47</sup>Religion & Ethics News, Catholic Bishops- Transcript of Panel Discussion, April 1993

## CHAPTER THREE

### CHAPTER THREE

#### The US Intervention Policy and Trends

##### *Introduction*

The chapter will also examine US intervention policy trends since independence and show how policy used to change to conform to the realities of international politics that obtained at a particular point in time. This examination will use McDougall's analysis of periods of US policy evolution in his conception of "the American Bible of foreign affairs"<sup>1</sup>.

Throughout modern history, the principle of non-intervention, tempered by the right of self-defense, has been cherished, especially by small and weak nations that lacked the strength to resist intrusions by stronger rivals. The United States, which started its political life as a small and weak nation, was no exception.<sup>2</sup> For a great part of its history the US was one of the foremost supporters of the doctrine of non-intervention. Its vocal support of the principles of nonintervention served three major purposes throughout the years, aside from its use as a guideline for policy. First, it was meant to deter European interventions directed against the United States and its neighbors. President

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<sup>1</sup> Walter McDougall is author of many books, including the Pulitzer Prize-winning *The Heavens and the Earth: A Political History of the Space Age* and the evolution of American foreign policy in the book; *Promised Land, Crusader State: The American Encounter with the World Since 1776*. Trade Reference Publishers, Philadelphia, 1998

<sup>2</sup> Nordlinger E. *Isolationism Reconfigured American policy for a new century*. Princeton, Princeton University Press, 1996, p. 101

George Washington, in his Farewell Address to the nation, repeated a mantra common to the Founders.<sup>3</sup> He intended that the United States would not intervene in Europe's affairs in return for reciprocity by European powers<sup>4</sup>. Accordingly, it would object to interventions by other powers because it considered nonintervention as the normal rule to be applied by the world community.

Second, the doctrine was intended to inform the American people that pressures on their government for a policy of intervention were likely to be rejected on principle, even when Americans were eager to help European colonies in Latin America to become independent states. Expectations were that repeated proclamations of the nonintervention policy would deter interventions that the country could ill afford to undertake.

Third, once the principle had become venerable and established as right and moral conduct, it became useful as a psychological tool of politics. Many undesirable international activities could be readily condemned by labeling them as "intervention and desired interventions could be excused by denying that they constituted interventions."<sup>5</sup> Alternatively, the United States could claim that a particular intervention was within the scope of interventions permitted under the hallowed nonintervention doctrine. Putting policies within a framework of "moral" and "immoral" actions is particularly important for a democratic country where political leaders depend on the support of elected government officials and public opinion. It is easier to secure support when policies can

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<sup>3</sup>Washington's Farewell Address," in Documents of American History, edited by Henry Steele Commager [New York: Appleton-Century-Crofts, 1948], p. 174

<sup>4</sup> McDougall W, Promised Land. Crusader State: The American Encounter with the World Since 1776, Trader Reference Publishers, 2007, pp. 101-125

<sup>5</sup> Butterfield H, Christianity, Diplomacy, and War (New York: Abingdon-Cokesbury Press, 1954), p. 96.

be defended as moral principles, rather than as complex bargaining schemes or maneuvers in political power games.

*The early years of US independence-Isolationism.*

All three purposes appeared to be particularly well served during the early years of the nation.<sup>6</sup> It is therefore not surprising that American presidents, starting with George Washington, almost routinely advocated nonintervention. During the decades when the country was most vulnerable to foreign intervention and ill-equipped to intervene individually or collectively in faraway Europe, the doctrine was credited with keeping European powers from intervening in the affairs of the United States as a reward for American nonintervention in Europe's liberation struggles. The doctrine permitted American leaders to refuse most requests for political as well as humanitarian interventions. The successes claimed for the doctrine strengthened faith in its value.

At first, the doctrine was generally expressed in absolute terms to give it the strongest possible impact. This formulation was never viewed as a renunciation of the presumably inalienable right of every country to use intervention to protect its vital interests. Rather, the doctrine was avowed for its practical usefulness for American policy needs. That the nonintervention doctrine involved legal considerations under international law was not stressed until 1842, when Secretary of State Daniel Webster alluded to its grounding in the legal doctrine of sovereign rights.<sup>7</sup>

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<sup>6</sup> Nordlinger E, Isolationism Reconfigured: American policy for a new century. Princeton, Princeton University Press, 1996, p. 76

<sup>7</sup> US Foreign Policy Encyclopedia; Intervention theory; Encyclopedia of American Foreign Policy; Copyright 2002 by Gale GRP Inc.

President James Buchanan's inaugural address in 1857 is an early example of reformulation. He declared it to be the nation's policy never to interfere in the domestic concerns of other nations "unless this shall be imperatively required by the great law of self-preservation."<sup>8</sup> He did not specify the occasions when the law of self-preservation might apply and the ways in which such occasions could be identified. Buchanan also contended that the nonintervention doctrine did not preclude the duty of preventive intervention. When, as happened in Mexico in 1859, a Western Hemisphere country was afflicted by internal unrest that spilled over its borders, it was the duty of the United States to intervene to stop the unrest and thereby prevent intervention by other powers.<sup>9</sup> Congress did not accept this argument at that time. But when the argument was revived and amplified during the closing decades of the nineteenth century, it became an accepted clarification of the scope of the nonintervention doctrine.

Officially, a number of major clarifications were labeled corollaries to the Monroe Doctrine, which had become an icon for the nonintervention principle. Linking interventionist policies to this icon served to maintain the aura that the non-intervention doctrine remained absolute. For example, the Olney Corollary of 1895 asserted the right of the United States to intervene in any conflict between an American and non-American power that endangered the security of the United States. Under the Roosevelt Corollary of 1904, the United States claimed an even broader right and duty to act as policeman of the Western Hemisphere. If any nation in the hemisphere permitted conditions on its

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<sup>8</sup> Robert Higgs, Crisis and Leviathan: Critical Episodes in the Growth of American Government [New York: Oxford University Press, 1987], pp.123-58.

<sup>9</sup> US Foreign Policy Encyclopedia; Intervention theory; Encyclopedia of American Foreign Policy; Copy Right 2002 by Gale GRP Inc.



territory that might invite intervention by another country, then it was incumbent on the United States to intervene to remedy these conditions and forestall intervention by others. The United States must assume this obligation because the Monroe Doctrine prevented other powers from exercising their right of intervention in troubled Western Hemisphere countries.<sup>10</sup>

### *The early 20<sup>th</sup> century-Wilsonianism or liberal internationalism*

During the presidency of Woodrow Wilson, the nonintervention doctrine received yet another interpretation. Wilson's claim that the United States must discourage dictatorships or unconstitutional governments in Latin America by refusing to recognize them was accompanied by strong professions that some interventions be possible but with the principles embodied in the established doctrine of nonintervention.<sup>11</sup> Destruction of unpopular governments, Wilson argued, freed foreign nations from undue restraints on their sovereign right to opt for democratic rulers. Rather than serving as a tool for coercing these nations into unwanted action, intervention thus became a tool to enable their people to exercise their will. While Wilson expanded the scope of the right of intervention on one hand, he also laid the groundwork for subsequent contractions of the right. His stress on the sovereign rights of states to determine their own fates, regardless of size, led to a series of international agreements that proclaimed the nonintervention

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<sup>10</sup> The Monroe Doctrine is a United States policy introduced on December 2, 1823, which said that further efforts by European governments to colonize land or interfere with states in the Americas would be viewed by the United States of America as acts of aggression requiring US intervention.

<sup>11</sup> The Columbia Encyclopedia, Sixth Edition. 2001-07- principle of American foreign policy enunciated in President James Monroe's message to Congress, Dec. 2, 1823. It initially called for an end to European intervention in the Americas, but it was later extended to justify U.S. imperialism in the Western Hemisphere

principle as a prescription of international law except for individual or collective self-defense. Such agreements became part of the Covenant of the League of Nations (1918) and later the United Nations Charter (1945).

Given that the absolute formulation of the doctrine was literally interpreted by many people, it grew embarrassing when the United States engaged in numerous interventions in the Western Hemisphere. Therefore, American statesmen reformulated the doctrine so that it would specify the exceptional conditions under which intervention would be permitted.<sup>12</sup> The ebb and flow of efforts to spell out the limits of nonintervention, without abandoning the nonintervention doctrine as a general principle, constitute the major aspects of doctrinal developments over the decades that ensued. The dangers that would give rise to interventions were identified explicitly but broadly in the 1930s and 1940s.<sup>13</sup> During that period, American political leaders believed that the efforts of the Axis powers to expand their control over Europe and Asia endangered peace and warranted intervention. American leaders sought, sometimes successfully and sometimes unsuccessfully to have these concerns incorporated into multinational declarations to indicate that nonintervention pledges did not apply to power plays by the Axis powers. The idea that mutual nonintervention pledges by the United States and the Axis powers might be a better way to protect the United States was rejected by the administration of Franklin D. Roosevelt.<sup>14</sup> In addition, the United States explicitly asserted a right of counterintervention against illegal interventions by other powers. Protection from

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<sup>12</sup> The Columbia Encyclopedia, Sixth Edition. 2001-07. principle of American foreign policy enunciated in President James Monroe's message to Congress, Dec. 2, 1823. It initially called for an end to European intervention in the Americas, but it was later extended to justify U.S. imperialism in the Western Hemisphere

<sup>13</sup> James McNight, Foreign Policy in focus, The intervention theory, FPIF, Vol.5 No.1,p.23-4

<sup>14</sup> Chopra, Jarat; Sovereignty is no longer Sacrosanct; Ethics and international affairs; Cambridge, 1996

intervention was a privilege earned by deserving countries; it was not an absolute right. Secretary of State Cordell Hull, during the administration of President Franklin D. Roosevelt, declared that the nonintervention principle applied only to nations that respected the rights of others and the United States, as a powerful member of the community of nations, had a right and duty to intervene in order to prevent or stop illegal interventions directed against countries that lacked the power or will to resist such interventions.<sup>15</sup>

### *The Post World War II and Cold War-Containment*

Following the defeat of the Axis powers in World War II, communism was viewed as the main danger to the national integrity and security of the United States and the world. Intervention was justified more on the basis of fighting communism than humanitarian concerns. Regimes that frequently carried out human rights abuses remained friends of the US as long as they rejected communism at domestic level. In the Truman Doctrine,<sup>16</sup> proclaimed in 1947, the United States declared broadly that either unilateral or collective intervention was justified to protect any country in the world from falling under communist rule. This implied that peace and security of the United States and the world were at stake if communism was allowed to spread. The Eisenhower

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<sup>15</sup> Chopra, Jarat; *Sovereignty is no longer Sacrosanct; Ethics and international affairs*; Cambridge, 1996

<sup>16</sup> Policy first set forth by United States President Harry S. Truman in 1947. The immediate objective of the policy was to send U.S. aid to anti-Communist forces in Greece and Turkey, but it was later expanded to justify support for any nation that the United States government believed was threatened by Communism during the Cold War period.

Doctrine, proclaimed in 1957 seemed to focus on ideology and resources<sup>17</sup>. It pinpointed some of the areas where intervention might be expected specifically, the political integrity of Middle Eastern nations was declared to be vital to world peace and American interests. If nations in the Middle East were threatened by overt armed aggression by communist forces, the United States would come to their aid if they requested help. Whenever possible, the United States also tried to conclude mutual defense and economic assistance treaties to provide a legal basis for coming to the aid of selected countries when counterintervention was needed to resist a communist takeover<sup>18</sup>. In addition, the United States explicitly asserted a right of counterintervention against illegal interventions by other powers. Protection from intervention was a privilege earned by deserving countries; it was not an absolute right. Secretary of State Cordell Hull, during the administration of President Franklin D. Roosevelt, declared that the nonintervention principle applied only to nations that respected the rights of others.<sup>19</sup> The United States, as a powerful member of the community of nations, had a right and duty to intervene in order to prevent or stop illegal interventions directed against countries that lacked the power or will to resist such interventions.

The 1970s however saw a retrenchment in overt interventions against communist expansion. Accordingly, it seemed appropriate once more to redefine the scope of the nonintervention doctrine to conform to the prevailing official interpretation of the limits

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<sup>17</sup>The Eisenhower Doctrine, given in a message to the United States Congress on January 5, 1957, was the foreign policy of U.S. President Dwight D. Eisenhower. The Eisenhower Doctrine required Congress to yield its traditional war-making power to the president. The doctrine stated that the United States would use armed forces upon request in response to imminent or actual aggression to the United States.

<sup>18</sup> Morton Halpern and Mira Cralic; Protecting Democracy; International responses. Center for American Progress June 21, 2005

<sup>19</sup> James McNight, Foreign Policy in focus, The intervention theory, FPIF ,Vol.5 No.1 1994, pp.23-4

set by the policy. The Nixon Doctrine of 1970 expressed the principle that the United States did not consider it an obligation to protect other countries against communist intervention unless it had determined, in specific cases, that American security interests were involved.<sup>20</sup> Even then, intervention was not the sole duty of the United States but was an obligation shared by all countries opposed to the overthrow of noncommunist governments by communist contenders. President Jimmy Carter deemed the Soviet Union's invasion of Afghanistan in 1979 a major threat to the West's oil lifeline.<sup>21</sup> He responded in 1980 with the Carter Doctrine, declaring with unusual specificity that attempts by any foreign power to gain control over the Persian Gulf region would be considered a threat to the vital interests of the United States. It would be repelled, using military force if necessary. Five years later, in 1985, President Ronald Reagan once more pledged support for a policy of unilateral armed intervention in Third World countries if this became necessary to overthrow Marxist-Leninist regimes.<sup>22</sup> The policy was to be applied selectively anywhere in the world where people were fighting against communism. In practice, it was implemented mostly in Central America.

The Truman, Eisenhower, Nixon, and Reagan doctrines did not pinpoint the conditions that might trigger a specific intervention. However, high-level military leaders often laid out the policy in somewhat more detail. For instance, General Colin Powell, who was chairman of the Joint Chiefs of Staff during the administration of George H. W. Bush (1989–1993), declared that military interventions should be undertaken only when a

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<sup>20</sup> Arthur M. Schlesinger Jr., "The New Isolationism," *The Atlantic Monthly* May 1952, p.23

<sup>21</sup> Lori Damrosch and David Scheffer, *Law and Force in the New International order*, Boulder, Westview Press, 1991

<sup>22</sup> US Foreign Policy Encyclopedia; Encyclopedia of American Foreign Policy; Copy Right 2002 by Gale GRP inc.

number of conditions were met.<sup>23</sup> Most importantly, the political objectives of the intervention had to be clearly defined and the gains and risks and likely outcomes had to be adequately assessed. Based on these assessments, it should be clear that the objectives of the intervention could be reached through military means at a defensible cost. Finally, nonviolent alternative policies, if suitable, had been tried first and failed.<sup>24</sup>

Thus, the nonintervention doctrine has ebbed and flowed in its more than 200-year history. It has gone from an absolute expression, tempered by the implicit exception that interventions for vital purposes were permissible, to an emphasis on a broad range of exceptions to the doctrine, which left it little more than an empty shell. Then it was reformulated in absolute terms, tempered by statements of exceptions stressing that collective or unilateral intervention would still be used by the United States to protect vital security interests. But the absolutism abated again in the wake of major international threats posed by upheavals in Europe and Asia and evidence that collective interventions were difficult to orchestrate.

### ***Global Mellorism-Post Cold War***

Since the end of the Cold War, there has been a paradigm shift favoring the use of military intervention into humanitarian crises, spearheaded by the US and sometimes the UN. Both support the notion of rights without borders. Evidence of this paradigm shift can be seen in intervention events that have occurred during the 1990s. However, this has raised many

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<sup>23</sup> Selden Z, *New Conservatism and the American Mainstream*, Journal: Policy Review 2004, pp 3-4

<sup>24</sup> Ibid

questions about the conditions under which the so called humanitarian intervention occurs, its likely consequences, and its legal justification.

The end of the Cold War and collapse of the Soviet Union ushered in a new era. Humanitarian interventions in ethnic conflicts and interventions to aid countries in creating democratic governments became fairly common interventionist activities, but not without some local opposition. The current position of the United States on legality and illegality of interventions has generally leaned toward a broad construction of the right of intervention. Presidents and secretaries of state have argued since the end of World War I that international law permits states to retain the right to determine which of their national interests may be protected through intervention and the occasions when intervention is required. Likewise, the United States contends that states retain the right to intervene individually when collective intervention machinery fails to operate efficiently. At the same time, the United States has narrowed the scope of American interests defined as vital enough to justify protection through intervention. Examples of cases claimed as justifying intervention include the interventions in Vietnam, Cuba, Grenada, Panama, Haiti, Kosovo and Iraq.

## **CHAPTER FOUR**

### **ASSESSMENT OF USE OR ABUSE OF THE DOCTRINE OF HUMANITARIAN INTERVENTION IN US INTERVENTION ACTIVITIES**

The chapter will examine US intervention activities post WWII to the present and assess whether there was correct application or abuse of the doctrine of humanitarian intervention. It will look at US justification and rationale for intervention visa vis its activities in the victim state during and after the military intervention to establish the existence of use or abuse of the doctrine. US activities will also be examined to establish linkage between activities and certain ostensible characteristics of US foreign policy. The hypotheses set out in the first chapter will also be tested in this chapter. Amongst the countries to be sampled will include; Somalia, Iraq/Kuwait 1991, Grenada, Panama, Kosovo and Iraq 2003.

#### **The Post WWII US Intervention Activities**

During the Cold War era, most interventions could be defended by US as counter interventions that were needed to implement the policy of containment designed to stop the spread of communism. Interventions in Vietnam, Grenada and Nicaragua were carried out on this basis. Following the collapse of communism in the Soviet Union in 1991, different rationales came to the fore. The new potential dangers to U.S. interests came primarily from an epidemic of violent internal conflicts, extreme dictatorships and human rights violations in formerly communist nations and in developing countries



throughout the globe.<sup>1</sup> To justify intervention under these circumstances, U.S. presidents used three major rationales. Most commonly, presidents contended that these upheavals endangered world peace and security in general and hence the security of the United States. This argument served two purposes. It was useful in justifying collective interventions under the United Nations Charter and it weakened complaints by domestic critics in the United States, especially in the Senate, who denied that the country's national security was imperiled and therefore charged that the United States had no business undertaking these foreign interventions.

The second major rationale was the evolving consensus that humanitarian interventions are a moral duty as well as a requirement in the wake of the various human rights declarations. However, this argument has never been considered strong enough to silence influential critics of intervention but is nevertheless used. Hence, it is usually accompanied by claims that the human rights violations, besides endangering vulnerable populations, also constitute a threat to peace.

The final major rationale, also usually buttressed by individual or collective self-defense arguments, is the claim that the United States is a world power that must protect the world from major misbehavior by members of the international community. The argument was clearly articulated by President Bill Clinton in his Farewell Address to the nation in 2001.<sup>2</sup> He declared that "America cannot and must not disengage itself from the world. If we want the world to embody our shared values, then we must assume shared

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<sup>1</sup> Haass, Richard N. Intervention: The Use of American Military Force in the Post-Cold War World. Washington, D.C., 1994, pp.201-210

<sup>2</sup> Scatcher Oscar, The Right of States to use Armed Forces, Michigan Law Review Vol.82, April-May, 2002, pp 18-21

responsibility."<sup>3</sup> Clinton's plea resembles to a surprising extent the claims made by President Theodore Roosevelt a century earlier. The Roosevelt Corollary<sup>4</sup> that pictured the United States as the world's policeman was never accepted by the rest of the international community. Its modern version is likely to be equally unpopular, especially among small nations that are the most likely targets of intervention.

These three rationales present the general context in which we can investigate use or abuse of the doctrine of humanitarian intervention. This study will however focus its analysis on the second rationale in which humanitarian intervention is viewed as a moral duty and obligations by US in the wake of various human rights violations that also constitute a threat to peace. The study will examine whether US activities in this context constitute use or abuse of the doctrine of humanitarian intervention.

### *Intervention in Grenada*

The small Caribbean island of Grenada, 120 square miles in size, was invaded in October, 1983 by a U.S.-led force of some 8000 U.S. troops and 300 soldiers from seven Caribbean countries.<sup>5</sup> Five of these Caribbean states were members of the sub regional grouping, the Organization of Eastern Caribbean States (OECS), to which Grenada also belonged. The intervention, named "Operation Urgent Fury," started in the capital city of

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<sup>3</sup> Scatcher Oscar, The Right of States to use Armed Forces, Michigan Law Review Vol.82, April-May, 2002, pp 18-21.

<sup>4</sup>The Roosevelt Corollary was a substantial amendment to the Monroe Doctrine by U.S. President Theodore Roosevelt in 1904. Roosevelt's extension of the Monroe Doctrine asserted the right of the United States to intervene to stabilize the economic affairs of small states in the Caribbean and Central America if they were unable to pay their international debts.

<sup>5</sup>Gordon et al., International Law and the United States Action in Grenada: A Report, 18 Int'l Law (1984), p.339.

St. George's on October 25, 1983, and had secured all of its military objectives and defeated the local Grenadian army, the People's Revolutionary Army, by October 28th. By December 15, 1983, all U.S. combat forces had been withdrawn. In the wake of this intervention, were at least ninety-five people left dead, including more than thirty civilians, and about 430 wounded.<sup>6</sup>

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In a statement on the Grenada debacle made before the U.S. House Committee on Foreign Affairs on November 2, 1983, Kenneth Dam, Deputy Secretary of State, offered two main reasons for the military intervention: (1) rescuing foreign and U.S. nationals in the face of violence; and (2) cooperating in the restoration of democracy and order<sup>7</sup>.

Moore observes that members of the OECS were drawn into participating in this essentially U.S. operation on grounds of "collective self-defense" under Article 8 of the OECS Treaty and Article 51 of the U.N Charter.<sup>8</sup> The irony however is that Article 8 of the OECS specifically deals with collective defense and the preservation of peace and security against external aggression. There was no external aggression against US. Further, as Joyner has pointed out regarding the rather forced interpretation of this OECS Article, "the United States is not a party to the OECS Treaty and therefore legally lies outside the ambit of its concerns."<sup>9</sup> Moreover, indeed, "no external aggressor" existed:

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<sup>6</sup> Terry Nardin & Kathleen D. Pritchard, *Case 502: Ethics and Intervention: The United States in Grenada, 1983*, in Georgetown University: Pew Case Studies in International Affairs, (1990), p 12.

<sup>7</sup> Dep. Sec. of State Kenneth W. Dam, Statement on Grenada before the House Committee on Foreign Affairs (Oct. 25, 1983), quoted in Marian Nash Leich, *Rescue Operation by Armed Forces—Grenada*, 78 *Am. J. Int'l L.* 200, (1984) p.200.

<sup>8</sup> Moore J, *Law and the Grenada Mission*. Charlottesville, Va., and Washington, D.C., 1984, pp 49-51

<sup>9</sup> Joyner C, *Reflection on the Lawfulness of Invasion*, 78 *Am. J. Int'l L.* (1984)., pp.131-2

Grenada, the state in question, was a treaty member and there was, in short, no provision for military action in instances other than those involving 'external aggression, including mercenary aggression.'<sup>10</sup> Unlike the U.S. invasion of Panama six years later, the reasons given by Dam in his presentation before the U.S. House Committee did not mention the establishment of democracy as one of the invasion's objectives. In he stated in his speech that the US objectives did not encompass the imposition on the Grenadians of any particular form of government. The Grenadians were to determine their institutions freely for themselves, he added.<sup>11</sup> Nonetheless, the final outcome of this intervention included installation of government that was in the American favor. Interference in the type of government for Grenada was outside the stated objectives of US intervention. That it became part of the objectives in the final analysis points to other undeclared interests in the intervention that were to be served by the new regime. On the basis of this view the episode in Grenada in 1983 may fail to pass the legitimacy of a humanitarian intervention.

In principle as stated by Dam, rescuing nationals from harm in a foreign country could qualify as humanitarian intervention and, more tenuously, as an exercise in national self-defense. Furthermore, intervention to put an end to brutality within the indigenous population of a foreign land and to restore public order among them has historically been offered as good examples of humanitarian intervention. However, such claims have to be analyzed on a case-by-case basis in order to separate reality from pretext. Hence a brief factual background to the Grenada crisis is called for;

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<sup>10</sup> Joyner C, Reflection on the Lawfulness of Invasion, 78 *Am. J. Int'l L.* (1984)., pp.131-2.

<sup>11</sup> Dep. Sec. of State Kenneth W. Dam, Statement on Grenada before the House Committee on Foreign Affairs (Oct. 25, 1983), quoted in Marian Nash Leich, Rescue Operation by Armed Forces—Grenada, 78 *Am. J. Int'l L.* 20, (1984), p.200

Maurice Bishop, the popular leader of the leftist New Jewel Movement (NJM) in Grenada, seized power on March 13, 1979 and became Prime Minister and head of the People's Revolutionary Government (PRG).<sup>12</sup> The Bishop team put into place a socialist-type socio-economic program, but a split soon developed within the team. One faction, led by the Deputy Prime Minister Bernard Coard, apparently felt that Bishop was not being radical enough and that he was "moving too slowly to consolidate a 'Leninist' restructuring of Grenadian society."<sup>13</sup> On September 25, 1983, Bishop was forced by the ruling party to share his leadership of the NJM, and on October 12th Coard attempted to force him out as Prime Minister. This marked the beginning of the collapse of governmental institutions, a breakdown in public order, and widespread brutality. Bishop was taken into custody and put under house arrest. A crowd of supporters, fired upon by troops, later succeeded in freeing him from arrest. Wishing to halt further violence, he surrendered to the military and was promptly executed. Several cabinet ministers and union leaders met the same fate. In the wake of these and other murders, the People's Revolutionary Army announced the dissolution of the government and the formation of a sixteen-member ruling military council led by General Hudson Austin. A "shoot-on-sight" curfew was imposed and scheduled to remain in effect until October 24, 1983. The U.S. invasion began the following day to rescue US nationals and restore democracy employing the doctrine of humanitarian intervention.

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<sup>12</sup>Terry Nardin & Kathleen D. Pritchard, Case 502; Ethics and Intervention: The United States in Grenada, 1983. in Georgetown University: Pew Case Studies in International Affairs, (1990), pp 12-13.

<sup>13</sup> Dep. Sec. of State Kenneth W. Dam, Statement on Grenada before the House Committee on Foreign Affairs (Oct. 25, 1983), quoted in Marian Nash Leich, Rescue Operation by Armed Forces—Grenada, 78 Am. J. Int'l L. 20, (1984),p.200.

One group of foreign nationals prominently featured in the “rescue justification” of the intervention consisted of 354 American medical student residents at the True Blue and Grand Anse campuses of St. George’s Medical School.<sup>14</sup> According to the Pew Case Study account of the intervention, the students never felt they were in danger in the days prior to the invasion. At a meeting of the students held on October 23, 1983, only ten percent expressed a desire to leave.<sup>15</sup> The Chancellor and the Vice Chancellor of the medical school did not believe the students were in danger and refused to make a public statement to the contrary. On October 24th, as four charter planes left St. George’s airport, the students had the opportunity to depart the island if they wished. Thus, there was an unresolved and serious doubt concerning the extent to which U.S. citizens were endangered on the eve of the invasion. However, there remained the justification relating to the spread of brutalities and the breakdown of public order, the victims of which were predominantly the people of Grenada themselves. Leaving aside the matter of rescuing Americans and other foreign nationals, the question is, would the protection of Grenadians have featured as a significant factor in the decision to invade?, and this constitute a humanitarian issue.

Given the size, location, population, and the nature of its economy, Grenada, prior to the emergence of Maurice Bishop, had traditionally been considered “too insignificant to command the attention of senior government officials in Washington.”<sup>16</sup> Grenada was not Panama. Soon after Bishop and his leftist NJM came to power, Grenada began to attract attention, particularly after its government voted with Cuba against the United

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<sup>14</sup> Terry Nardin & Kathleen D. Pritchard, *Case 502: Ethics and Intervention: The United States in Grenada, 1983*, in Georgetown University: Pew Case Studies in International Affairs (1990), pp12-13.

<sup>15</sup> Schachter Oscar, The U.N. Legal Order: An Overview, in *The United Nations and International Law*, pp.3–26

<sup>16</sup> Michael Hirsch, Calling All Regio-Cops: Peacekeeping’s Hybrid Future, 79 *Foreign Aff.*, Nov.-Dec. 2000, at 2, 2.

States on a U.N. General Assembly Resolution on Afghanistan. The Carter Administration's policy was essentially to just distance itself from Grenada, yet its human rights record was bad. The relations between the two countries worsened during the Reagan Administration. Apart from Grenada's record of human rights violations, U.S. hostility towards her was exacerbated by Bishop's growing links with Castro's Cuba and the pitch of his anti-American rhetoric. According to one account, Bishop once publicly referred to President Reagan as a "fascist."<sup>17</sup> The U.S. President, in turn, did not mince his words in manifesting his disgust with Grenada. In February, 1982, while announcing the creation of the Caribbean Basin Initiative, a regime of preferential tariff treatment of Caribbean exports produced with U.S. materials, President Reagan rejected Grenada's participation in the program and referred to the "tightening grip of the totalitarian left" in the Caribbean. On a subsequent occasion, he attacked Grenada as bearing "the Soviet and Cuban trademark, which meant that it will attempt to spread the virus among its neighbors."<sup>18</sup> Finally, on March 23, 1983, while presenting his "Star Wars" plan to the American people in a nationwide address, President Reagan showed aerial reconnaissance photographs of Cuba, Nicaragua, and Grenada as evidence of the building of a "red triangle."<sup>19</sup>

If President Reagan wished to disentangle Grenada from this Caribbean "red triangle," and to stop the spreading "communist virus" in its tracks, the disturbances in that country provided him with a great excuse to launch an invasion. It is most unlikely

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<sup>17</sup>Michael Hirsch, *Calling All Regio-Cops: Peacekeeping's Hybrid Future*, 79 *Foreign Aff.*, Nov.-Dec. 2000, p. 2.

<sup>18</sup>Gordon et al., *International Law and the United States Action in Grenada: A Report*, 18 *Int'l Law* 429, (1984), p.339.

<sup>19</sup> *Ibid*

that President Reagan was motivated to act out of chagrin for the execution of Bishop and his Marxist-Leninist ministers. It should be recalled that Bishop himself had written several letters to President Reagan requesting more normal diplomatic relations. His letters went unanswered. After President Reagan's "Star Wars" broadcast on March 23, 1983, Bishop, sensing an impending invasion, flew to Washington to seek an audience with President Reagan. This man wanted Washington to consider him a friend. His effort did not succeed in the Washington visit, and merely ended up with a forty-minute meeting with the U.S. National Security Advisor and the Deputy Secretary of State. President Reagan, who once described the Soviet Union as "the Evil Empire," seemed obsessed with the threat of international communism and the Bishop was part of. His foreign policy led to what became known as the "Reagan doctrine," which he himself later extolled in a speech at the National Defense University on October 25, 1988. .It stated;

"Around the world in Afghanistan, Angola, Cambodia, in Central America, the United States stands today with those who would fight for freedom. We stand with ordinary people who have had the courage to take up arms against Communist tyranny". This stand is at the core of what some have called the Reagan Doctrine.<sup>20</sup> Indeed, in countries such as Afghanistan, Angola, Cambodia, and Nicaragua, where the United States under the Reagan Administration did not directly intervene in its global ideological war, it provided assistance that in many ways promoted violations of human rights. This included supply of weapons, to "freedom fighters." In the case of Grenada, it was easier

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<sup>20</sup>The Reagan Doctrine was a strategy orchestrated and implemented by the United States under the Reagan Administration to oppose the global influence of the Soviet Union during the final years of the Cold War. Carter B & Phillip R. Trimble, International Law 1219–20 (3d ed. 1999),p.29



to do an ideological battle in the form of direct military intervention that would be branded as a humanitarian intervention.

The Reagan Doctrine<sup>21</sup> had no more credence in international law than the Brezhnev Doctrine, which purported to lend a hollow ideological justification to the Soviet invasion of Czechoslovakia in the summer of 1968. Yet, it was probably the Reagan Doctrine, and not the doctrine of humanitarian intervention, that provided the justification for the American intervention in Grenada. The fundamentals that form the motivation for humanitarian intervention were not present. A report submitted in 1984 by a special committee of the American Bar Association's Section on International Law and Practice reached the conclusion that "the military action initiated October 25th rests upon an unsteady legal foundation."<sup>22</sup>

### *Intervention in Panama*

The argument that international peace and security are endangered by political unrest in a foreign country was used by President George H. W. Bush, to displace General Manuel Noriega, who headed the government of Panama in 1990 when the country was in turmoil and there were some violations of the human rights of Noriega's enemies. Economic sanctions, such as freezing Panamanian assets in the United States and revoking Panama's most-favored-nation trade status, had failed to drive the General

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<sup>21</sup> The doctrine was as follows:

A particular socialist state, staying in a system of other states composing the socialist community, cannot be free from the common interests of that community. The sovereignty of each socialist country cannot be opposed to the interests of that community. The sovereignty of each socialist country cannot be opposed to the interests of the world of socialism, of the world revolutionary movement.

<sup>22</sup> Gordon et al., *International Law and the United States Action in Grenada: A Report*, 18 *Int'l Law* 429, (1984), p.339.

out of office and hence military intervention was considered necessary.<sup>23</sup> On December 20, 1989, under the Bush senior administration, the United States invaded Panama. General Manuel Noriega, then *de facto* leader of Panama and “Commandante” of the country’s armed forces, had been a good ally of the United States under both the Reagan and Bush administrations, but became an enemy after U.S. officials tagged him with involvement in drug trafficking into the United States and all forms of political impropriety. Noriega had attempted to rig the May, 1989 elections of the national assembly and the presidency.<sup>24</sup> This was unsuccessful, as his candidate lost to the opposition leader, Guillermo Endarra. Noriega refused to accept the results, and continued to maintain himself and his henchmen in power by force of arms. Apparently, the United States initially attempted to negotiate Noriega’s voluntary surrender of power. When this and economic sanctions failed, President Bush launched a military offensive, “Operation Just Cause”, comprising of approximately 26,000 military personnel to oust Noriega from power.

Reporting the invasion to the U.S. Congress the next day, Bush stated that he ordered the invasion “to protect American lives, to defend democracy in Panama, to apprehend Noriega and bring him to trial on the drug-related charges for which he was indicted in 1988, and to ensure the integrity of the Panama Canal Treaties.”<sup>25</sup> U.S. forces met some resistance in the early hours of the invasion, but within four days, Noriega’s

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<sup>23</sup> Abraham D. Sofaer, *The Legality of the United States Action in Panama*, 29 *Colum. J. Transnat’l L.*, 290 (1991), pp 212-218.

<sup>24</sup> Anthony D’Amato, *The Invasion of Panama Was a Lawful Response to Tyranny*, 84 *Am. J. Int’l L.*, 516, (1990), pp 496-510.

<sup>25</sup> President George Bush, *Report to Congress and Hon. Thomas S. Foley, Speaker of the House of Representatives (Dec. 21, 1989)*, in Covey T. Oliver et al., *International Legal System* 1299 (4th ed. 1995) [hereinafter *President’s Letter*].

forces had been routed, and on January 3, 1990, he had turned himself in to U.S. military authorities in Panama. He was then embarked upon a plane en route to Homestead Air Force Base in Florida to face trial for drug trafficking.<sup>26</sup>

In his statement to Congress, Bush only made a general mention of a climate of aggression that had “placed American lives and interests in peril,”<sup>27</sup> specifically referring only to the killing of one U.S. Marine officer by the Panama Defense Forces (PDF) personnel, the beating and detention of a U.S. Naval officer, and threats to the officer’s wife. No incidents were alleged in the statement regarding massacres carried out by Noriega’s supporters against fellow Panamanians. There was certainly no mention of carnage occurring in Panama involving American and Panamanian lives. In fact, within that short three-to-four day period of the U.S. invasion, there had been at least 400 Panamanian deaths in comparison to only twenty-three U.S. fatalities.

Operation Just Cause led to lively debate among international law scholars in the United States, including sharp exchanges in the pages of the *American Journal of International Law* and the *Columbia Journal of Transnational Law*. Abraham Sofaer, then Legal Advisor to the State Department, argued that the Panama operation was both necessary and proportionate under international law; it was a justifiable use of force aimed at “restoring the legitimate, democratic government selected by the people of

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<sup>26</sup> Adam Hasson, Note, Extraterritorial Jurisdiction and Sovereign Immunity on Trial: Noriega, Milosevic, and Pinochet—Trends in Political Accountability and Transnational Criminal Law, 25 *B.C. INT’L & COMP. L. REV.* (2000), pp 125-127.

<sup>27</sup> President George Bush, Report to Congress and Hon. Thomas S. Foley, Speaker of the House of Representatives (Dec. 21, 1989), in Covey T. Oliver et al., *International Legal System* 1299 (4th ed. 1995) [hereinafter *President’s Letter*].

Panama,” and that the threat or use of force was not inherently wrong.<sup>28</sup> Sofaer here seemed to place the use of force to restore democracy under the rubric of humanitarian intervention.

Anthony D’Amato, another defender of the Panama invasion, focused on the human rights gains of the intervention to justify its validity under international law. He was enthused about “the human rights of Panamanian citizens to be free from oppression by a gang of ruling thugs.”<sup>29</sup> He dismissed concerns about the unwarranted interference with the sovereignty and territorial integrity of Panama as “views conditioned by a statist concept of international law.”<sup>30</sup> To him, the adherents of such views appeared incapable of “seeing through the abstraction that we call the ‘state’ to the reality of human beings struggling to achieve basic freedoms.” For D’Amato, if Article 18 of the Organization of American States (OAS) Charter could be cited for the proposition that no trans-boundary military intervention is permissible, the OAS Charter is arguably a self-interested expression of the Latin American countries which sought to form a non-intervention cartel so that each would have free reign in their own nation. If human rights were to be taken seriously, one could not give much weight to the conspiracies among ruling elites that did not represent the views of their populations. Non-intervention treaties are not real rules of international law but quasi-rules invented by ruling elites to insulate their domestic control. D’Amato viewed behavior such as the U.S. invasion of Panama and Grenada as milestones in the development of a non-statist concept of international law

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<sup>28</sup> Abraham D. Sofaer, *The Legality of the United States Action in Panama*, 29 *Colum. J. Transnat’l L.* 281, (1991), p. 290.

<sup>29</sup> Anthony D’Amato, *The Invasion of Panama Was a Lawful Response to Tyranny*, 84 *Am. J. Int’l L.* 516, (1990), pp 496-510.

<sup>30</sup> *Ibid*

that would change previous nonintervention formulas such as Article 18 of the OAS Charter. The real world, according to him, was changing faster than the statist paradigms of scholars, and tyranny was giving way to popular sovereignty. The invasions of Panama and Grenada according to D' Amato, had contributed to this momentum and might act as catalysts in this global revolution. Ruling elites who enjoy tyrannical control and regard themselves as secure from internal uprising can no longer regard themselves as insulated from foreign humanitarian intervention.<sup>31</sup> He is of the belief that Human rights law demands intervention against tyranny, and such intervention is legally justified and morally required. But the question that begs answers is, who is supposed to intervene in such situations? Multilateral or regional intervention, according to D'Amato, were preferable options. However, in his opinion, any nation with the will and resources may intervene to protect the population of another nation against tyranny. The need to have a widespread international condemnation of the atrocities and appeal for intervention is necessary for the intervention to enjoy support and legitimacy.

Just as Operation Just Cause had its supporters within international law circles in the United States, the military action triggered even more virulent opposition from other well-known scholars. Defense of the invasion on the basis of the Charter is unconvincing to say the least. Suggestion that "a small exception for humanitarian intervention" in Article 2(4) of the U.N. Charter justified an invasion when infect very few U.S. citizens were threatened, and especially when the nationals could have been rescued or protected without armed invasion: "There is no basis in law for such radical exceptions to Article

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<sup>31</sup> Anthony D'Amato, *The Invasion of Panama Was a Lawful Response to Tyranny*, 84 *Am. J. Int'l L.* 516.(1990),p.124

2(4).”<sup>32</sup> These views “eviscerate Art. 2(4),” and would unduly expand humanitarian intervention to permit any state to invade another “to impose the invading state’s view and version of democracy.”<sup>33</sup> Hence, the position that the threat or use of force was not inherently wrong was “surely not international law.” On the basis of very few US citizens were actually threatened, arguments for Operation Just Cause have little credibility.

Admittedly operations to rescue a state’s nationals can be permissible under international law.<sup>34</sup> The United States and some other states have consistently construed the U.N. Charter to allow rescue expeditions, and the international community generally has an expectation that those states that can, will continue to invoke such a right. Fortunately or otherwise, the U.N. has not specifically repudiated such a claim. Given the right of citizens overseas to state protection, a state’s claim of rescue rights can be assimilated into the right of self-defense. Thus, the use of force to rescue nationals cannot persuasively be described as contrary to international law. This kind of mission must however be applied within the constraints of the principles of proportionality and necessity. The intervention by US in Panama used force that was disproportionate to the mission objectives.<sup>35</sup> 26,000 troops is approximately two divisions in military quantitative terms and is considered too large for a rescue mission of about 400 people.

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<sup>32</sup> Louis Henkin, *The Invasion of Panama Under International Law: A Gross Violation*, 29 *Colum. J. Transnat’l L.* 293, (1991), p.307.

<sup>33</sup> Louis Henkin, *The Invasion of Panama Under International Law: A Gross Violation*, 29 *Colum. J. Transnat’l L.* 293, (1991), p.307.

<sup>34</sup> Tom J. Farer, *Panama: Beyond the Charter Paradigm*, 84 *Am. J. Int’l L.*, (1990), pp.503, 505–06.

<sup>35</sup> Gilboa, Eytan. “The Panama Invasion Revisited: Lessons for the Use of Force in the Post Cold War Era.” *Political Science Quarterly* (1995–1996), p.110.

The mission also went beyond the objectives of a rescue mission by removing the government of Noriega from power.

Further, if the justification for the invasion was viewed in terms of the imperatives of a democratic system of government, the Bush Administration would need to argue that one state can force a change in the political machinery of another state for other reasons besides the protection of their own sovereignty, a theory which has received widespread international hostility.<sup>36</sup> Despite the fact that some countries withhold recognition of certain governments for ideological reasons, it is seldom argued by those refusing recognition that the new government did not have the protection that international law provides all other states. Panama for whatever reasons was entitled to enjoy this protection under article 2 (4) and 2 (7) of the Charter.

It can be argued that if the United States rested its justification for the invasion on any normative paradigm, it was not one that can be derived from the Charter. Any attempt at advocating a state's right of intervention in any other state in order to remove a government forced to maintain itself through the intimidation of the majority, might make such an advocate appear unwise. On the day Noriega was being flown to Florida under U.S. arrest, President Bush declared that he had accomplished all four objectives of his military intervention in Panama: "To safeguard the lives of American citizens, to help restore democracy, to protect the integrity of the Panama Canal Treaties, and to bring General Manuel Noriega to justice."<sup>37</sup> However, as always, we must be able to

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<sup>36</sup> Tom J. Farer, *Panama: Beyond the Charter Paradigm*, 84 *Am. J. Int'l L.* (1990), pp.503, 505-06.

<sup>37</sup> Ved P. Nanda, *The Validity of United States Intervention in Panama Under International Law*, 84 *Am. J. Int'l L.* 404, (1990),p. 494-5.

distinguish between true objectives or reasons for actions, and pretextual aims or rationalizations quite subtle in this case.

Operation Just Cause had little to do with humanitarian intervention. It is a situation in which the claim of humanitarian intervention rings hollow, and actually does a disservice to the serious-minded struggle to establish the doctrine as a valid principle of international law. While the immorality of foreign state action may outweigh the interests protected by the non-intervention norm of international law, it is certainly relevant in a claim of humanitarian intervention to establish the scale of alleged victims.<sup>38</sup> This again raises the matter of proportion of the means and methods used by the intervening state to deal with the situation at hand. In the case of Panama, was it the number of American citizens and/or Panamanian nationals who were killed or maimed that turned the invasion into one of humanitarian intervention? It is observed that the scale of atrocities did not call for the proportion of the force used by US in Panama. Where the scale or proportion of response is relatively excessive the presence of abuse can be expected.

Bush listed the restoration of democracy among the objectives of his triumphant invasion of Panama. While it appeared that Noriega's foe, Endarra, was winning the vote count in the May, 1989 elections, the count was actually never completed. Thus, it was more accurate to refer to the ensuing problem as the disruption of the electoral process. At any rate, the "restoration" of democracy in Panama certainly does not require the same response as the effort to assure humanitarian assistance to the sick and famished as in

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<sup>38</sup> Sarah A. Ramage, *Panama and the Myth of Humanitarian Intervention in U.S. Foreign Policy: Neither Legal Nor Moral, Neither Just Nor Right*, 10 *Ariz. J. Int'l & Comp. L.* 1, (1993), p. 34.



Somalia in 1992–1995 and Bosnia in 1994–1995, or the desperate incursions to curtail sustained massacres in Liberia in the late 1980s and Sierra Leone in the mid-1990s.

The “right to democratic governance” embraced by Franck and Ramage is still emerging.<sup>39</sup> The level of moral sensitivity of the international community as a whole to such a right did not appear to have reached a stage in 1989–1990 whereby military intervention to enforce the right could be justified in terms of human rights protection. The right to democratic governance, even when it has finally emerged and become stabilized, would still need to pay allegiance to the more basic norms of non-intervention and self-determination. Democratic governance is a subset of self-determination; and self-determination as enshrined in Article 2(7) of the U.N. Charter seems virtually inseparable from the precept of non-intervention in Article 2(4). This explains Ramage’s description of the norms of non-intervention and self-determination as “the literal DNA of the democratic entitlement. To proclaim their destruction is as futile as trying to kill one’s ancestors.”<sup>40</sup>

Similar to the intervention in Grenada, Operation Just Cause was not a valid case of humanitarian intervention. The intervention in Panama was dictated by U.S. political considerations about the need to remove Noriega from power and have him replaced with a person that could serve US interests well. This was in total disregard of the international

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<sup>39</sup> Franck, Thomas. “The Emerging Right to Democratic Governance.” American Journal of International Law. (1992), p.86

<sup>40</sup> Sarah A. Ramage, “Panama and The Myth Of Humanitarian Intervention in U.S. Foreign Policy: Neither Legal Nor Moral, Neither Just Nor Right,” Arizona Journal of International Law and Comparative Law, vol. 10, no. 1, (1993), p.26

law norms on the use of force in international relations.<sup>41</sup> Among the overriding U.S.'s concerns were: (1) uncertainties over the fate of the Panama Canal, as the Carter-negotiated treaties came closer to implementation; (2) the place of Panama in the democratization of Central America and (3) the intransigence of General Manuel Noriega. These issues had nothing to do with human rights violations in Panama. Human rights issues were a mask to cover pursuit of self interest by the US in Panama. This pursuit was to be ensured through change of government and regime in Panama.

### *Intervention in Somalia and Kuwait*

A less political, and initially less controversial, intervention informed by humanitarian imperatives took place in Somalia in 1992.<sup>42</sup> It began as a purely humanitarian venture to provide starvation relief and stop human rights abuses in that African country. No strategic, economic, or drug trafficking issues were involved, and Somali leaders had not seized territory illegally. However, the country was in the throes of a civil war without an effective government in place. Proponents of the intervention argued therefore that it made no sense for foreign powers to ask anyone's permission to enter the country. The United Nations, with strong member support, had approved the mission after it had become impossible for relief agencies to function in the war-torn country. The United States then dispatched 37,000 troops to Somalia to keep food relief supplies out of the reach of the feuding warlords and distribute it to the

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<sup>41</sup> Ved P. Nanda, *The Validity of United States Intervention in Panama Under International Law*, 84 *Am. J. Int'l L.* 404, (1990) pp 494-5.

<sup>42</sup> Clarke, Walter, and Jeffrey Herbst, eds. *Learning from Somalia: The Lessons of Armed Humanitarian Intervention*. Boulder, Colo., 1997, p.4.

starving population. The initial plans called for completing the mission within five months.

But, as often happens in unstable areas, the various UN forces involved in the mission, including the American contingents, soon became embroiled in the civil war, changing the nature of the venture in unforeseen and unplanned ways. It had become obvious that effective delivery of aid to the people required bringing about at least some semblance of political order. In the wake of political efforts to pacify the country, which turned out to be futile, Somali soldiers attacked the relief teams, inflicting heavy casualties on them and the soldiers.<sup>43</sup> Eighteen U.S. soldiers were among the dead. After some hesitation, President Clinton withdrew U.S. forces in October 1993, in the wake of the killings. Pictures of the corpse of an American soldier dragged along the streets of Somalia's capital city had outraged the American public and led to angry recriminations in Congress about the wisdom of undertaking the mission.

The Somalia intervention, besides souring the U.S. government's taste for humanitarian interventions, gave rise to the belief that ample television coverage of human disasters throughout the world can arouse the anger and compassion of the American public. In turn, the public may then pressure the national government to intervene to stop human suffering. This putative phenomenon is dubbed "the CNN effect."<sup>44</sup> As evidence that such an effect spawned and was a major motivation for the

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<sup>43</sup> Clarke, Walter, and Jeffrey Herbst, eds. Learning from Somalia: The Lessons of Armed Humanitarian Intervention. Boulder, Colo., 1997, pp 35-6.

<sup>44</sup> Livingston, Steven, and Todd Eachus. "Humanitarian Crisis and U.S. Foreign Policy: Somalia and the CNN Effect Reconsidered." Political Communication 12 (1995), pp 413-429.

initial intervention in Somalia, scholars pointed out that graphic pictures and reports about atrocities, starvation, and devastation in Somalia which had been widely aired on CNN television touched peoples emotions world wide and the US. Publics and pressure groups, then forced the government, against its better judgment, to airlift relief supplies and later send U.S. troops to Somalia. The feeling that the situation in Somalia required intervention was widespread among the local and international populations. The support for action to alleviate the suffering of people in Somalia was unanimous. This was a case where the intervention was obligated on moral and humanitarian grounds. Clear evidence of widespread human suffering is an important determinant of whether or not a particular disaster requires intervention as observed in Somalia. US intervention in Somalia had the support of the American public and the rest of the world because the motivations were seen by observers as truly humanitarian. In general, public-opinion polls show that the American public supports purely humanitarian interventions by a substantial margin, especially if there are no American casualties.<sup>45</sup> The same holds true when the public becomes convinced that the intervention seeks to subdue an aggressor eager to attack the United States, injure its vital interests, or damage its citizens. Some US governments have used these reasons to rally domestic support where interventions seemed unjustified. The public like the rest of the world is far less supportive of interventions that seem designed to change another country's politics or governance when there appears to be no immediate threat to vital U.S. interests<sup>46</sup>. In their view an intervention that includes

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<sup>45</sup> Haass, Richard N. Intervention: The Use of American Military Force in the Post-Cold War World. Washington, D.C., 1994, pp 63-9

<sup>46</sup> The United States and Post-Cold War Interventions: Bush and Clinton in Somalia, Haiti and Bosnia, 1992-1998 Claremont, Calif., 1998

change of governance structures is not legitimate. The intervention in Somalia did not have these characteristics.

The Gulf War of 1991 is another good example of the United States working effectively with the United Nations to implement a policy that seemed in its own as well as in the collective interest. When Saddam Hussein invaded Kuwait in 1990, destabilizing the balance of power in the Middle East and threatening the uninterrupted flow of oil, the UN Security Council condemned the aggression and imposed economic sanctions. When these measures failed to persuade Hussein to withdraw his troops, President George H. W. Bush threatened U.S. military intervention. The U.S. position was legitimized and strengthened by a Security Council resolution 678 that authorized "all necessary means," including the use of military force, to get Saddam out of Kuwait.<sup>47</sup> Operation Desert Storm, which was launched in 1991 with full control by the U.S. military, thus became a UN operation supported by a coalition of twenty-seven nations. The drawback to the collaborative arrangement was that U.S. freedom of action in the military operations and the peace settlement that followed the brief span of hostilities was limited by political pressures to include coalition members in decision making and make concessions to their wishes<sup>48</sup>. The sanction by UN and the multilateral nature it took legitimized the intervention and fulfilled the objectives of the intervention.

### *Intervention in Kosovo*

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<sup>47</sup> UNSC Resolution 678 (1990)

<sup>48</sup> Frenderschub, Helmut. "Between Universalism and Collective Security: Authorisation for the Use of Force by the UN Security Council." *European Journal of International Law* 5 (1994), pp 122-126.

The 1999 U.S.-led NATO air assault against Yugoslavia undertaken with the avowed aim of stopping human rights abuses in Kosovo has been extolled by pro-interventionists as a new model of humanitarian intervention. The then US President Bill Clinton and others argued that when a nation is committing gross human rights violations against its citizens, other nations or multilateral coalitions have the right to intervene militarily, without the authority of the UN Security Council, to end those abuses<sup>49</sup>. This intervention led by the US was without the approval of UN Security Council.

The Kosovo crisis illustrated the danger of bypassing the Security Council and lends credence to those who use this basis to argue that the intervention was not solely for humanitarian purposes but for other larger interests.<sup>50</sup> Had the United States gone to the Security Council, it is possible that a settlement similar to the one that ended the air war in Bosnia could have been achieved without the use of force. The Security Council might have insisted on more negotiations, a more flexible approach to the problem with a more or less prominent role for NATO and the United States. Moreover, the destructiveness of the war and its aftermath undermined Washington's humanitarian claims and reemphasized the reasons that the Charter's framers chose peace as its central tenet.

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<sup>49</sup> Noam Chomsky, The New Military Humanism: Lessons from Kosovo (Monroe, ME: Common Courage Press, 1999)

<sup>50</sup> Robinson, William I. Promoting Polyarchy: Globalization, U.S. Intervention, and Hegemony. Cambridge and New York, 1999, pp 201-232

The international intervention in Kosovo is often mentioned by pro-interventionists as one of the standard examples of humanitarian intervention<sup>51</sup>. Non-interventionists however see it otherwise. To them, this intervention was meant to spread US influence in the region and create new allies<sup>52</sup>. In 1999, several Western nations, without a Security Council resolution, led by US fought a war with Slobodan Milosevic, the President of Yugoslavia in order to end the campaign of repression against ethnic Albanians in the Serbian province of Kosovo. The intervention into Kosovo was conducted by air which saved financial costs as well as the lives of ground soldiers. However, this intervention, it is argued was motivated more by US selfish interests than the moral considerations<sup>53</sup>. For instance, in his address to the nation in Sept 19 99, President Clinton invoked another, particularly disturbing argument for intervention. He declared that "if we're going to have a strong economic relationship that includes our ability to sell around the world, Europe has got to be a key.... That's what this Kosovo thing is all about."<sup>54</sup> He thus seemed to suggest that the United States was fighting a war in Kosovo to make the world safe for capitalism. In fact, the President and other policy-makers had long been making similar arguments. In explaining its global strategy, for instance, the Pentagon declared in 1993 that "a prosperous, largely

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<sup>51</sup> Noam Chomsky, The New Military Humanism: Lessons from Kosovo (Monroe, ME: Common Courage Press, 1999).

<sup>52</sup> Michael Mandelbaum, "A Perfect Failure: NATO's War Against Yugoslavia," Foreign Affairs, vol. 78, no. 5, September-October 1999, pp 34-8.

<sup>53</sup> Benjamin Schwarz & Christopher Layne, Article: The Case Against Intervention in Kosovo, The Nation 19 April 1999, p.4

<sup>54</sup> Ibid

democratic, market-oriented zone of peace and prosperity that encompasses more than two-thirds of the world's economy" requires the "stability" that only American "leadership" can provide<sup>55</sup>. In the debate over US intervention in Bosnia, leading foreign policy figures, including the former head of the National Security Agency and Senator, Richard Lugar, asserted that, left unchecked, the war there could have led to "national parochialism" in Europe, that could have threatened global economic interdependence and US prosperity<sup>56</sup>.

The war in Kosovo was part of Washington's quest to make the world safe for America's investors and exporters. Speaking to the Boston Chamber of Commerce 1998, Defense Secretary William Cohen justified NATO expansion as a way of "spreading the kind of security and stability that Western Europe has enjoyed since after World War II to Central and Eastern Europe."<sup>57</sup> And, in an observation that resonated well with his audience, he noted: "And with that spread of stability, there is a prospect to attract investment."<sup>58</sup> It seems therefore that the Clinton administration was moved by the human tragedy of Kosovo for other objectives. Clearly, its perception that US economic interests were indirectly at stake can be seen. These objectives were sadly rationalized as humanitarian. Cohen further added; the Administration's strategy was to discourage violence and instability because it destroys lives and markets.

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<sup>55</sup>Priest, Dana, The Mission: Waging War and Keeping Peace with America's Military (Norton, 2003),p. 14-15.

<sup>56</sup>Brune, Lester H. The United States and Post-Cold War Interventions: Bush and Clinton in Somalia, Haiti and Bosnia. 1992-1998. Claremont, Calif., 1998,p 98.

<sup>57</sup>Priest, Dana, The Mission: Waging War and Keeping Peace with America's Military (Norton, 2003),14-15.

<sup>58</sup>Ibid



What is most worrying about this economic rationale (which amounts to an imperialist argument) is its selfishness. According to US policy-makers, the logic of global economic interdependence leads inevitably to a proliferation of US security commitments: Instability and aggression, virtually wherever they occur, are regarded as a threat to America, because they would disrupt the global stability upon which the United States purportedly depends for its prosperity. Such that in a thinking similar to the domino theory, there is fear that instability in even economically unimportant areas (like Kosovo) could "spill over" and infect other areas regarded as essential to global economic interdependence especially western Europe. The dominant motivation for US was its economic and political interests with humanitarian situation providing the opportunity to justify the intervention. Both Russia and China opposed the intervention into Kosovo<sup>59</sup>. They did not like what they saw as US intrusion into their backyard. This meant that the United States could not have won a resolution at the Security Council to conduct this operation. The Security Council did however pass resolutions stating that what was occurring in Kosovo was a threat to peace; but, it did not authorize use of military force. From the UN perspective the intervention in Kosovo was illegal. Jurists have also explored the troubling gap between positive international law and morality in the context of Kosovo, and found the former wanting. A key point here is that those who intervene must first comply with international law, or the credibility of the entire class of such interventions suffers. The legality of the NATO bombing of Kosovo is considered

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<sup>59</sup> Stephen Shalom, "Reflections on NATO and Kosovo," available at: <http://www.zmag.org/crisescurevts/shalomnp.htm>

dubious, and the reasons given by NATO for seeking to circumvent the authority UN Security Council questionable. But the fact that the requirements of law and morality were seen by many as so removed from one another in the Kosovo action exposed just how threadbare the existing international legal framework can be when it comes to dealing with human rights catastrophes. Under the circumstances, the need to get legitimacy through UN authorization is important.<sup>60</sup> In the aftermath of the Kosovo War, U.S. administration officials articulated a doctrine that proclaims that the United States will forcefully intervene to prevent human rights abuses when it can do so without suffering substantial casualties.<sup>61</sup> This doctrine rhetorically suggests a new, assertive U. S. approach to promoting and defending human rights abroad .But in light of what is happened in Rwanda and now in Darfur, this new doctrine is just a rhetoric that is aimed to mask the motives of intervention.

The US administration concept of forceful military intervention to prevent a nation from committing human rights abuses has been highly selective. Human rights violations in Rwanda in 1994 and Darfur did not elicit similar military response and yet the human rights abuses that took place in these places were worse than those in Grenada, Panama and Kosovo. Analysts argue that U.S. failed to act in Rwanda, because of the country's little strategic or economic importance<sup>62</sup>. In other instances the US administration has chosen not to intervene to defend human rights precisely because the

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<sup>60</sup>Frenderschub, Helmut. "Between Universalism and Collective Security: Authorisation for the Use of Force by the UN Security Council." European Journal of International Law 5 (1994), p.32.

<sup>61</sup>Maynes, Charles William. "Relearning Intervention." Foreign Policy Review (spring 1999),pp 23-4.

<sup>62</sup>Brune, Lester H. The United States and Post-Cold War Interventions: Bush and Clinton in Somalia, Haiti and Bosnia, 1992-1998. Claremont, Calif., 1998

U.S. has strong strategic or trade interests in those countries, where US intervention on the grounds of human rights violations would undermine such interests. For instance, though the State Department recognized that Turkey, a close ally, committed flagrant human rights violations against its Kurdish minority, the administration not only failed to intervene to protect the Kurds but actually continued to export arms to Turkey<sup>63</sup>. During his October 1999 visit to Turkey, former president Clinton went so far as to praise Turkey's progress on establishing democracy that would later promote its entry into the European Union. If human rights were of serious concern to the U.S., Washington would have moderated on its language and further stopped selling guns and helicopters to Turkey<sup>64</sup>. It seems therefore that what comes first on the US priority list in its external relations is not human rights issues but US national interests.

### *The 2003 intervention in Iraq,*

According to the President of the United States George W. Bush and former Prime Minister of the United Kingdom Tony Blair, the reasons for the invasion were "to disarm Iraq of weapons of mass destruction (WMD), to end Saddam Hussein's support for terrorism, and to free the Iraqi people."<sup>65</sup> The main allegations were that Saddam Hussein was in possession of, or was attempting to produce, weapons of mass destruction; and that he had ties to terrorists, specifically al-Qaeda. In fact the human

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<sup>63</sup> Priest, Dana, The Mission: Waging War and Keeping Peace, the Military arsenal (Norton, 2003),pp 14-15.

<sup>64</sup> Priest, Dana, The Mission: Waging War and Keeping Peace, the Military arsenal (Norton, 2003),pp 14-15.

<sup>65</sup> 2003 invasion of Iraq- <http://en.wikipedis.org/wiki> accessed on 02 April 2009.

rights issues were introduced later when evidence of possession of weapons of destruction was not established by invasion forces.

Just like the invasion in Kosovo and others already noted, this invasion was not authorized by UN Security Council and there were protests in US and UK in opposition to the invasion. Robin Cook, then the leader of the British House of Commons and a former foreign secretary, resigned from Tony Blair's cabinet in protest over Britain's decision to invade without the authorization of a U.N. resolution.<sup>66</sup> Cook said at the time that it was against Britain's interests to create a precedent for unilateral military action.

Critics of the humanitarian justification, for instance Ruppert Michael argue that the Iraq war was not a humanitarian intervention although it was justified as such by intervening states of UK and US<sup>67</sup>. They argue that under most criteria for a legitimate humanitarian intervention, the use of force for humanitarian purposes may be used only in the most extreme and exceptional cases of genocide or mass slaughter. The reasoning here is twofold. First, there is no need to use military force in cases of minor or small-scale abuses for the simple fact that the harm caused by the intervention would eclipse the harm that it sought to avert. Second, the military option should be reserved only for those extreme and exceptional cases (such as genocide or mass slaughter), so as to avoid creating an excuse for waging war every time there is a nasty regime that demonstrates something less than the ideal complement of human rights. Under this criterion,

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<sup>66</sup> [http://news.bbc.co.uk/1/hi/uk\\_politics](http://news.bbc.co.uk/1/hi/uk_politics). accessed on 16 March 2009

<sup>67</sup> Ruppert, Michael, "The Unseen Conflict -- War Plans, Backroom Deals, Leverage and Strategy -- Securing What's Left of the Planet's Oil Is and Has Always Been the Bottom Line," International Business Review. Vol 5 Aug 2003,p.210

intervention in Iraq would not be deemed permissible since the scope of the Iraqi government's killing as of March 2003 was not of this magnitude. In short, it did not meet the "threshold" of human suffering that would be sufficient to trigger a humanitarian intervention. While some large-scale atrocities were perpetrated at various times under Saddam Hussein's rule, for example, the 1988 Anfal campaign against the Kurds<sup>68</sup>, humanitarian intervention is not a tool for *post facto* punishment, as Human Rights Watch's Kenneth Roth argues. It is for prevention, and would thus be unjustified in this respect for Iraq.<sup>69</sup> If reasons for US invasion of Iraq cannot be located in human rights issues there need to find them elsewhere to explain motivation for this invasion.

The real reasons for Iraqi invasion have not been discussed by the US administration or reported by the US media, as writes William Clark in his essay "Reasons for Going to War"<sup>70</sup>. The answer to the enigma about Iraq is simple yet perplexing. It is in large part an oil currency war. The war was meant to prevent further Organisation of Oil Exporting Countries momentum towards the Euro as an oil transaction currency standard<sup>71</sup>. In order to do this the US needed to gain geo-strategic control of Iraq along with its 2 largest proven oil reserves. Although a collective switch by OPEC would be extremely unlikely barring a major panic on the U.S. dollar, it would appear that a gradual transition was quite plausible. Furthermore, despite Saudi Arabia

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<sup>68</sup> Freedman, Lawrence, and Efraim Karsh. The Gulf Conflict 1990–1991: Diplomacy and War in the New World Order. Princeton, N.J., 1993, p.12.

<sup>69</sup> Roth K; War in Iraq not a humanitarian Intervention, Human Rights Watch Report, January 2004, p.16

<sup>70</sup> Clark W., Reasons for going to war; A macroeconomic and Geostrategic Analysis of the unspoken Truth, Essay, January 2004

<sup>71</sup> Islam, Faisal, "Iraq nets handsome profit by dumping dollar for euro," The Observer, February 16, 2003, p.18

being a US 'client state,' the Saudi regime appeared increasingly weak/threatened from massive civil unrest<sup>72</sup>. Some analysts believed civil unrest could have unfolded in Saudi Arabia, Iran and other Gulf states in the aftermath of an unpopular U.S. invasion and occupation of Iraq<sup>73</sup>. Undoubtedly, the Bush administration was acutely aware of these risks. Hence, the neo-conservative framework entailed a large and permanent military presence in the Persian Gulf region in a post-Saddam era, just in case the US needed to surround and control Saudi's large Ghawar oil fields in the event of a Saudi coup by an anti-western group. The Federal Reserve's greatest nightmare was that OPEC would switch its international transactions from a dollar standard to a euro standard. Iraq actually made this switch in Nov. 2000 (when the euro was worth around 82 cents), and actually the euro took off like a bandit .The dollar depreciated steadily against the euro. (Note: the dollar declined by 17% against the euro in 2002.)<sup>74</sup>

Informed by the possibility of a pending US economic disaster, the Bush administration conspired for a puppet government in Iraq to help a revert back to a dollar standard and stay that way while also hoping to veto any wider OPEC momentum towards the euro, especially from Iran, the 2nd largest OPEC producer who was also actively discussing a switch to euros for its oil exports.

This information about Iraq's oil currency is not discussed by the U.S. media or the Bush administration as the truth could potentially curtail both investor and consumer

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<sup>72</sup> National Energy Policy: Report of the National Energy Policy Development Group, whitehouse.gov, May 2001

<sup>73</sup> London, Heidi Kingstone, "Middle East: Trouble in the House of Saud." The Jerusalem Report, January 13, 2003, pp 22-26.

<sup>74</sup> Garnaut, John, "US Dollar Losing Its Position As Asia's Reserve Currency." July 17, 2002

confidence, reduce consumer borrowing/spending, create political pressure to form a new energy policy that slowly weans US off Middle-Eastern oil, and of course make the occupation of Iraq unpopular<sup>75</sup>. This quasi 'state secret' is addressed in a Radio Free Europe article that discussed Saddam's switch for his oil sales from dollars to the euros, to be effective November 6, 2000<sup>76</sup>: The effect of an OPEC switch to the euro would have been that oil-consuming nations would have had to flush dollars out of their (central bank) reserve funds and replace these with euros. The dollar would crash anywhere from 20-40% in value and the consequences would be those one could expect from any currency collapse and massive inflation like what happened with the Argentina currency crisis<sup>77</sup>. You'd have had foreign funds stream out of the U.S. stock markets and dollar denominated assets. There would surely have been a run on the banks much like the 1930s or the current economic meltdown. The current account deficit would have become unserviceable; the budget deficit would go into default, and so on creating something similar to 3rd world economic crisis scenario. The United States economy is intimately tied to the dollar's role as reserve currency. This doesn't mean that the U.S. couldn't function otherwise, but that the transition would have to be gradual to avoid such dislocations and the ultimate result of this would probably be the U.S. and the E.U. switching roles in the global economy. This is a phenomenon the US would not have taken lying down. It was going to fight hard, and to do this it had to look for some cover up to attack Iraq and legitimize the war. Hence excuses like possession of weapons of

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<sup>75</sup> Isbell, Paul, "The Shifting Geopolitics of the Euro." Real Instituto El Cano, September 23, 2003

<sup>76</sup>Ibid

<sup>77</sup> Liu, Henry C K, "US dollar hegemony has got to go," Asia Times. April 11, 2002

mass destruction and human rights abuses were used to justify this attack. But US activities on the ground indicate that the motive for intervention was outside the claimed reasons of intervention. These activities include; change of regime and structure of government, US companies' heavy involvement in trade in oil and a more than six years of military occupation of Iraq among others.<sup>78</sup>

### *Other cited intervention cases*

For years, the U.S., acting virtually alone and supported only by a token British military presence, bombed the so-called no-fly zone in northern Iraq, which were established ostensibly to protect the Kurdish population. Unlike the war to oust Iraq from Kuwait, which had Security Council approval, Washington conducted bombings without UN backing. U.S motives in continuing this bombing were not related to protecting the Kurds, but to Washington's dispute with Iraq over weapons inspectors<sup>79</sup>. With the end of the cold war and the struggle against communism, humanitarian intervention to prevent human rights abuses seems to be providing a rationale for selective U.S. or U.S.-led military interventions, outside the definition of humanitarian intervention. The application of the doctrine of humanitarian intervention by the US is simply the latest in a series of pretexts employed by the United States to justify unilateral military intervention. In recent decades, the U.S. has launched military actions under the rubric of overthrowing totalitarian governments and bringing democracy to people (Cuba, Vietnam, Nicaragua, Chile, Grenada), preventing terrorism (Sudan and Afghanistan), and stopping drug trafficking (Panama).

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<sup>78</sup> Clark, Wesley, *Waging Modern War: Iraq, Terrorism, and the American Empire*, Public Affairs (2003)

<sup>79</sup> Scott Ritter, *Nuclear Weapons Inspection in Iraq 1991-98*, UPS, 2003



The policy of intervention to support democratic governments was originally part of the policy of containment of communism. The US believed that if a country had a strong democratic government, presumably it would not succumb to an authoritarian ideology. After the Cold War ended, supporting or even creating democracies was viewed as an aid to international peace on the dubious assumption that democratic countries rarely go to war with other democratically governed states. As if to underline the importance of sponsoring the growth of democratic institutions worldwide, the U.S. State Department created a Bureau of Democracy, Human Rights, and Labor Affairs during the Clinton years.<sup>80</sup> The bureau's mission was defined as promotion of democracy throughout the world and formulation of human rights policies, including those relating to labor issues. In addition, the Clinton administration, like several of its predecessors, used the granting or withholding of economic resources as a weapon in the fight to democratize the nations of the world.

Overall, when U.S. policymakers weigh the options in situations where intervention is under consideration in the post-Cold War world, several factors seem to weigh especially heavily in favor of becoming involved. They are the location of the trouble spot, the relative size and power of the country in question, the type of political government in power, the degree of defiance of U.S. requests displayed by the local rulers, and the chances of a successful outcome. Given these criteria, Western Hemisphere locations, especially if they are close to the United States, are most likely to elicit intervention, provided the country is small and headed by an arrogant, democracy-

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<sup>80</sup> US Foreign Policy Encyclopedia; Encyclopedia of American Foreign Policy. Copy Right 2002 by Gale Group Inc.

US-Department of State, Bureau of Democracy, Human Rights, and Labour Affairs 1999-2001 archives.

defying ruler, and provided the United States is ready and willing to commit sufficient resources to carry the intervention through to a successful conclusion.

Other important factors are the magnitude and viciousness of human rights violations, the effectiveness of mass media in depicting them to large audiences, the impact of unrest on American citizens in the country in question, and the likely-hood that an exodus of refugees will seek asylum in the United States or allied nations as represented by the case of Haiti intervention in 1994.<sup>81</sup> While absence of most of these conditions explains why the United States abstained from intervention in numerous major human rights tragedies in the post-Cold War era, U.S. policies have been consistent with regard to small states with dictator and resources as noted in Panama and Iraq. The complex international and domestic environment that surrounds foreign policy decisions has not made it impossible to predict specific political actions with certainty. The US pre-occupation with the spread of liberalism (democracy and free market) to serve US interests. This aggressive push for a liberal international order explains the behavior of US tendency to intervene in some states.

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<sup>81</sup>Nicholas Low, *Media Critiques*, Mar 4, 2004, 23:11

In 1994, Clinton ordered American forces to intervene to “protect American interests and stop the influx of refugees to America..

## CHAPTER FIVE

### CONCLUSIONS AND RECOMMENDATIONS

This chapter is the conclusion of the study. It will make a summary of the findings made in the study and provide an opinion on whether the doctrine of humanitarian intervention is correctly applied or abused. The conclusion will be guided by the hypotheses set out at the beginning of the study; (a) to test whether abuse of the doctrine is due to pursuit of political self interests (b) whether change of governance structures against the principle of sovereign independence by an intervening power is part of the objective of humanitarian intervention and, (c) the disproportionate use force compared to scale of violations of human rights makes a claimed humanitarian intervention not genuine.

#### *Pursuit of US political self interests-Liberalism*

Since the Cold War's end, US policy has reflected the fact that conflict amounted to a penning up of American impulses towards ideological universalism in values and practices.<sup>1</sup> With the immediate post-Cold War cluster of high-profile interventions in Kuwait, Somalia, Panama, Iraq and Kosovo, America demonstrated that it was prepared to expand the geographical scope of its actions in defence of a bundle of principles (of occasionally questionable compatibility) ranging from the promotion of a liberal world order and protection of human rights from state-directed human rights abuses. The post

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<sup>1</sup> Hippel, Karin . Democracy by Force: U.S. Military Intervention in the Post-Cold War World. Cambridge and New York, 2000. The author in this book focuses on U.S. interventions that were followed by democracy and nation building efforts in Panama, Somalia, Haiti, and Bosnia.

cold war era witnessed initial efforts to use the international institutional architecture, in the absence of the obstacles and distractions posed by the Cold War, to further this course. Aside from attempts to resurrect the UN Security Council as a serious forum for the coordination of global peace and security, there were also attempts to use international financial institutions such as the IMF, World Bank and WTO as part of the broad dimension covering liberal economics.<sup>2</sup>

With the fundamental ideological clash represented by the Cold War removed, the United States could, in a sense, return to what it had always considered the real business of its internationalist agenda; securing the peace and stability of the world through the universalisation of its own liberal practices and values. If all states could be representative democracies then peoples could realize their common interests through cooperation, domestically and abroad and with an international great-power, there could be consensus that something approximating liberal democracy offered the route to development; and the increased potential for harmony. This would imply that, the liberalist approach of the American agenda for peace and development, which had existed on paper in an incipient state since the days of Wilson's statements on international labour regulation and Truman's "Point Four" program, could also be advanced. The Clinton administration's high-profile attachment to the banner of free trade similarly reflected a set of oft-stated convictions regarding the potential for harmonious economic growth paving the path to peaceful world progress.

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<sup>2</sup>Evans T, "Hegemony, Domestic Politics and the Project of Universal Human Rights", in *Diplomacy and statecraft*, (London, Frank Cass, Vol. 6. No.3 November 1995) pp 616-644

The administration of George W Bush inherited a post-Cold War course characterized by interventionism and universalism, seeking to further the twin liberal goals of representative democracy and market economics as the perceived keys to a righteous world peace. Despite the removal of the Soviet threat of nuclear holocaust, the constraints imposed on interventionism by American public opinion in the immediate post-Cold War period were, substantial, as illustrated by the ostentatious disavowal of nation-building after a handful of messy casualties during operations in Somalia. The terrorist attacks of 11 September 2001 had effects which were manifold, and which touched most corners of the globe, but perhaps the most significant was the latitude which their effect on public opinion gave to the Bush administration to redefine itself and America as a radically interventionist power in pursuit of global reform. Through the National Security Strategy of 2002<sup>3</sup> and elsewhere, the administration set out in snappier terms than its immediate predecessors a grand strategy whereby all great powers might be not just desired, but expected, to cooperate under American leadership-cum-hegemony, pursuing common interests and stamping on common problems. The Bush administration's actions, most especially, of course, its invasions of Afghanistan and Iraq, were even more striking than its words in demonstrating that the traditional philosophy of universal global reform as the *raison d'être* of an internationalist American foreign policy was now to be applied with a harder edge.

In the examined cases where the intervention took place, the assumption was that an essentially right-thinking people had been hijacked by a vicious regime which misdirected the power of the state away from the true interests of the people in pursuit of

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<sup>3</sup>US National Security Strategy, Document- September,2002

their own perverse ends. The solution was the removal of the regime in question, which would be followed by the swift election, overseen by America, of representative institutions, which would place the future course of the nations under democratic control. Relieving the people of the inherent frustrations of repressive tyrannical rule would allow the channeling of popular energy away from America-hating and into productive politics and civilized societies. Likewise, the grinding economic dissatisfaction produced by undemocratic overbearing government could be ameliorated by the unleashing of the nations' economic potential under conditions of freedom. Hence, the ideology of the "liberalism"-that a free people under free institutions, with free markets, will be at peace with itself and with the rest of the world-was as clearly at the heart of Bush's plans for a peaceful Middle East as it had been in Wilson's plans for a peaceful Europe.<sup>4</sup>

While it is considered that the United States has a limited conception of what democracy means, it is by no means clear that such circumscription of that concept is either arbitrary or misguided. American political thought has always been insistent both that formalistic liberal mechanisms are the only legitimate means of upholding true democracy in practice, and that right to individual property and free enterprise, albeit regulated, are fundamental to genuine political liberty. In other words, the United States equates democracy with mixed-economy capitalism and international peace. This may be highly contentious in theory. Moreover, there are many places in the world where democracy and capitalism obviously do not constitute two sides of the same coin.

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<sup>4</sup> That there is a certain amount of overlap between the ideologies of Wilsonianism and neo-conservatism is a point which has been made many times, the reasons for this hopefully being clear to the reader from much of what has been said.

However, we are left with a conundrum that judged in comparison to its various 20th-century rivals-most obviously Soviet communism-the " American" formula does appear to have delivered some goods, freedom and happiness to more people than anything else on offer, for instance socialism and communism. Collectivism was tried and found wanting and not surprisingly was finally abandoned between 1989 and 1991<sup>5</sup>. It is however theoretically possible that there may be more collective, emancipatory and "true" forms of liberty and democracy out there which US hegemony is denying other peoples the right to pursue. It is at the very least arguable that the narrow model of liberal democracy upon which US hegemony insists actually is the only meaningful form which can function benignly in practice.

Many defenders of US interventions have focused mainly on the human rights gains of the intervention to justify its validity under international law. They are enthused about the human rights of citizens to be free from oppression by a group of ruling despots. They dismiss concerns about the unwarranted interference with the sovereignty and territorial integrity of other states as views conditioned by a statist concept of international law. The adherents of intervention views appear incapable of seeing through the possibility of abuse by powerful states in pursuit of selfish political agenda as observed but instead concern themselves with the problems of small violations that are a common thing in most sovereign states.

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<sup>5</sup> Sassen, Saskia. Losing Control?: Sovereignty in an Age of Globalization. New York, LPS, (1996), pp 102-117.

The claim that these interventions were humanitarian was a smoke screen to disguise US intentions and mobilize public support. This shows the extent to which the US is prepared to go to build an international order in the American image. The American image is captured in the idea that through liberalism, there is a political and economic model which if all societies adopted; there will be domestic and international peace. This has emerged as a defining feature of American foreign policy thinking dating from the presidency of Woodrow Wilson and World War I (WWI). As its rising economic power dictated to some degree, the US edged out of the isolationist policy as the 19<sup>th</sup> century drew to a close. Involvement in WWI offered the US a chance to reform the world in line with its own values. In the Wilsonian proposed solution to the problems of world order<sup>6</sup>, we see all the chief liberal principles, which mark the ideology of the liberal peace. Wilson and Roosevelt left a legacy of ideological conviction in American foreign policy to the effect that if the US was to be engaged in the world then that engagement was conditional on America's right to seek the reordering of that world in line with the American principles. This conviction guides US international interactions utilizing various techniques to promote certain values, one of them being military interventions.

The cold war was responsible for hardening the clear cut liberal pillars we see today. This war was not based just on military rivalries but on the commitment by US to transform the world order to be in tune with certain basic principles they considered universally applicable and whose barrier to realization was the Soviet Union and the

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<sup>6</sup> World War I Document archives; Woodrow Wilson League of Nations 14 points delivered in joint session on 18 Jan 1918.



communist ideology. This universalistic outlook acted as the defining note of US foreign policy strategy. With the end of the cold war, US returned to its unfinished business of securing the peace and stability through the universalisation of its own liberal practices. The methods through which this has been executed are; political, economic (through IMF and World Bank) and military interventions as noted in Panama, Iraq and Kosovo cases. These interventions had the mindset to advance US self interests.

### *Governance structures*

The “right to democratic governance” embraced by contemporary international relations is still emerging. The level of moral sensitivity of the international community as a whole to such a right has not reached a stage whereby military intervention to enforce the right could be justified in terms of a human right. The right to democratic governance, even when it has finally emerged and become stabilized, would still need to pay allegiance to the more basic norms of non-intervention and self-determination. Democratic governance is a subset of self-determination; and self-determination as enshrined in Article 2(7) of the U.N Charter and seems virtually inseparable from the precept of non-intervention in Article 2(4).<sup>7</sup>

The branding of US activities as humanitarian was a way of escaping condemnation for breaching international norms and can be judged as abuse of the doctrine of humanitarian intervention. A genuine humanitarian intervention aims at alleviating the suffering of people in a given state. Matters to do with the structures of the

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<sup>7</sup> Michael Reisman, Coercion and Self Determination; Construing Charter Article 2 (4); American Journal of International Law, Vol.78 July 199, pp 39-40.

political system in the given state are outside the humanitarian scope. They are issues that are best left to the citizens to determine in the way they think is best. That role cannot be taken over by an outsider. US was observed to include in her intervention agenda, issues of regime change in governance as was noted in Iraq and Panama. There should be the avoidance of the affectation of the internal structures by the intervening state for intervention to be considered truly humanitarian.

In genuine humanitarian interventions there should also be degree of relative disinterestedness of the interveners in the local politics. At its best, humanitarian intervention is altruistic. Yet, there is the tendency of most states not to get involved unless there is some political or national incentive for them. A good example is the Rwanda genocide case. US and her allies did not see any major political gain to necessitate their intervention. However, the “disinterestedness” standard is not to be taken as an absolute, as long as the overriding motive is the protection of human rights. Furthermore, there should not be an unnecessary use of force like what we noted in the Iraqi intervention of 2003 and Grenada. If force is necessary, it should be as unobtrusive as possible. In all aspects, the intervention should focus on humanitarian goals. The operation should not unnecessarily be long in duration; it ought to last only for the period required to effect the humanitarian changes necessary to prevent the violations of rights and to help ensure the continued existence of a peaceful situation. The US presence in Iraq has been too long to pass the test of duration.<sup>8</sup> Compared to the duration of its presence in Somalia, the difference is notably clear between the two interventions. One, (Somalia intervention took a short time) was truly motivated by humanitarian concerns

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<sup>8</sup> US military occupation in Iraq is 7 years now and President Obama has promised to pull out US troops by 2011. Washington Post, 19 April, 2009.

and qualifies as a humanitarian intervention. That of Iraq-2003 does not qualify as a humanitarian intervention for reasons of duration and other activities that the US is engaged in. These activities include change of regime, constitution and governance structures. These activities were pre-planned before the war.<sup>9</sup> Post-US military invasion behaviour in Iraq contradicts the claims of the motive of intervention. These activities are serving US self interests and thus discredit claims that the intervention was a humanitarian one.

A substantial body of opinion and of practice as noted in the study supports the view that when a state commits cruelties and persecutes its nationals in such a way as to deny their fundamental human rights, to the shock and conscience of mankind, intervention in the interest of humanity is morally permissible. This view implies that the rationale of non-intervention in internal affairs enshrined in the UN Charter is slowly being replaced by the principle that massive or widespread violations of human rights arising from governmental acts or internal conflicts and the magnitude of human suffering that they engender, can constitute a threat to international peace and security. In those circumstances, the Security Council can take appropriate measures, including the use of force for the protection of humanity in the target area. This was especially evident in the case of Somalia in 1993 and in Kuwait on the basis of breach of international law. Clearly state practice seems to indicate that intervention on those grounds is justified, hence, in the course of the years; governments have argued that the use of force is justified for breach of fundamental law or protection of individuals against grave and large-scale human rights violations. Interventions to safeguard human rights must

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<sup>9</sup> Walsh, Edward, "U.S. Sketches Plan for Postwar 'Iraqi Interim Authority'," Washington Post, March 15, 2003, 6:2.

however be motivated by humanitarian reasons accompanied by a virtual international concerns that engender a moral duty to act. Any intervention that is not driven by widespread appeal for action to alleviate human suffering is considered an act of aggression and a breach of international law that prohibits use of force against sovereignty of states. In addition all interventions including those meant to provide protection against violations of human rights, must be legitimized by the authorization of the UN; because promotion of human rights is one of the UN primary goals, and important for maintenance of international peace and security under the system created by the UN Charter.<sup>10</sup>

The branding of US activities as humanitarian was a way of escaping condemnation for breaching international norms and can be judged as abuse of the doctrine of humanitarian intervention. A genuine humanitarian intervention aims at alleviating the suffering of people in a given state. Matters to do with the structures of the political system in the given state are outside the humanitarian scope. They are issues that are best left to the citizens to determine in the way they think is best. That role cannot be taken over by an outsider. US was observed to include in her intervention agenda, issues of regime change in governance as was noted in Iraq and Panama. There should be the avoidance of the affectation of the internal structures by the intervening state for intervention to be considered truly humanitarian.

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<sup>10</sup> Article 1(3) of the UN Charter.

### *Proportionality of force used with respect to scale of atrocities*

Most of the interventions by US except Somalia had little to do with humanitarian purposes. These were situations in which the claim of humanitarian intervention was a disguise, and actually does a disservice to the serious-minded struggle to establish the doctrine as a valid principle of international law. While the immorality of foreign state action may outweigh the interests protected by the non-intervention norm of international law, it is certainly relevant in a claim of humanitarian intervention to establish the scale of alleged victims of human rights violations. This raises the matter of proportion of the means and methods used by the intervening state to deal with the situation at hand. In all the cases where US was involved, the scale of the number of citizens who were victims of human rights abuses was small yet the amount force used to protect them was too excessive. The requirement is that the scale of human rights abuses must be widespread and gross to necessitate external intervention. This was not the case in Panama, Iraq, Grenada and Kosovo making US intervention activities unjustifiable.

There are those who also criticize military invasion as a case of humanitarian intervention, but admit that operations to rescue a state's nationals might be permissible under international law. The United States and some other states have consistently construed the U.N. Charter and customary international law to allow rescue expeditions, and the international community generally has an expectation that those states that can, will continue to invoke such a right. The use of force to rescue nationals must however be executed within the limits of law. In addition the mission must comply with the principles of proportionality and necessity, without being infused with other motives. In spite of

these requirements, intervention cases by US since the end of the cold war for the purpose of rescue of nationals have been observed to pursue other objectives. In the case of Panama and Grenada, the rescue operation included interference in the local administrative structure.

### **In Summary**

The behaviour of US interventions can best be characterised as that of a hegemon, seeking through use of military power to coercively to impose its political and economic models on others in order to entrench its perpetual domination. In this it finds itself squarely within the mainstream of revisionist American history (and some strands of realist thought). The underlying argument here is that expansion has been at the heart of the American project since the founding of the republic. This view has even been adopted by some neoconservatives in their more modern rush to rethink the purposes of American power. This analytical perspective is, in many very important ways right. First, it is right "when it is suggested that the United States aspires to be, and to some degree is, a global hegemon. In fact, it can be said that United States might be defined as a hegemon, and could even be thought of as an Empire."<sup>11</sup> Secondly, it is most assuredly the case that the United States has sought, and continues to seek, to use all the levers of power and other strategic designs at its disposal to steer other countries towards the capitalist model of which it approves, and which to a great (though not unqualified) degree benefits its own interests. To avoid international condemnations, it justifies some of its military actions on humanitarian grounds. We would also agree that the US conception of democracy is

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<sup>11</sup> Michael Cox, "Whatever Happened to American Decline? International Relations and the New United States Hegemony", New Political Economy, Vol. 6, No.3 (2001), pp. 311-340

heavily circumscribed to include only a narrow range of developmental options which can accurately be described as a sort of formalistic liberalism, more concerned with individual rights and property titles than some other claimants to the "democracy".<sup>12</sup> The United States regards progress as a uniliner, with a single path towards modernity and civilization which equates with the embrace of US values and practices. In short US military intervention is one of the means through which the United States seeks to induct all nations into a capitalist and politically liberal system which largely serves to entrench its own economic and political dominance.<sup>13</sup> Clearly these so called humanitarian interventions have little to do with moral imperatives but a means for promotion of US self interests. The concern is that the US cons the rest of the world by justifying its self serving actions using a well meaning international moral doctrine. This behavior amounts to abuse of the doctrine of humanitarian intervention.

While the doctrine of humanitarian intervention is well meaning, its misuse by states will undermine its application for deserving cases. The way the US deploys its power in pursuit of American universalism must also be seen in terms of the impact it has on the international order and the future implications on the application of the doctrine. Its misuse of the doctrine is doing a disservice to the serious-minded struggle to establish the doctrine as a valid principle of international law.

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<sup>12</sup> This qualified character of American conceptions of democracy is a point made repeatedly in several areas in Michael Cox, G. John Ikenberry and Takashi Inoguchi (eds.), American Democracy Promotion (Oxford: Oxford University Press, 2000).

<sup>13</sup> Cox Michael, US foreign policy after the cold war; Superpower without a mission?, London, RIIA, 1995 pp 209-321.

This view notwithstanding, it is fair to also note here that, as much as we know that the things US has done (and continues to do) are deeply troubling, there is some notable good in them. Overall, even if we all agree that the United States is a self-regarding hegemon, it is, when all is said and done, a fairly liberal one, to a degree with a few parallels in the modern era. Today more than ever, it seems clear that the relationship between democracy promotion and US hegemony is mutually reinforcing, both in the minds of policy makers and in practice: the United States seeks to create liberal societies as a means of securing its global role and its preferred form of ultimate international order. Certainly, the universalization of such liberal democratic practices as those to which the United States subscribes is to some extent considerably a benign hegemonic project but, to the extent that it justifies its activities for such political projects on humanitarian grounds, in itself undermines the value of the projects and indeed an indictment on its honesty and moral standing.

While we may accept that the United States may be in successful pursuit of a hegemonic order founded on the domination of its own political and economic ideas, it is not at all right that this should amount to an unqualified disrespect of the existing international norms. As much as it is considered necessary and a moral duty to take action to save humanity from inhumane treatment, the authority to permit such action must have the approval of the rest of the world community through the UN. Any unilateral action is illegal and amounts to breach of international norms.



When nations send their military forces into other nations' territory, it is rarely (if ever) for "humanitarian" purposes. They are typically pursuing their narrow national interest, grabbing territory, gaining geo-strategic advantage, promoting political and economic interests or seizing control of precious natural resources. Leaders of such nations appeal to higher moral purposes by describing such actions in terms of humanitarian intervention. This is done to legitimize their activities and win public support. They use excuses such as bringing peace, justice, democracy and civilization to the affected area. This is not a new phenomenon. In the era of colonialism, European governments all cynically insisted that they acted to promote such higher values and standards. Today's "humanitarian intervention" is only the latest in this long tradition of political mendacity. It is perfectly clear in most cases of US intervention that her activities were illegal and not morally justified. These actions amounted to abuse of the doctrine of humanitarian intervention.

### **Recommendations**

- a. The United States should not employ military force for alleged humanitarian reasons without the explicit approval of the Security Council.
- b. The United States should end military support of nations committing serious human rights violations.
- c. The United States should strengthen its own participation in international human rights agreements.
- d. The United States should pursue its self interests through diplomatic channels and not use of force.

The challenge for U.S. foreign policy in the twenty-first century is to improve the international regime of human rights without undermining the UN charter's prohibition on the unilateral use of force. The most important step toward this goal would be for the United States to eschew military force for alleged humanitarian reasons without the explicit approval of the UN Security Council. The failure to obtain such approval prior to the war in Kosovo and the invasion of Iraq in 2003 seriously weakens the key international restraint against the use of force as embodied in the UN charter.

If the real purpose of U.S. humanitarian military intervention is to protect human rights, then America ought to employ peaceful and more principled methods for protecting those rights before resorting to military action. The U.S., which dominates the UN Security Council, should end its political selectivity and begin to work for a more principled human rights stance within the United Nations itself. Humanitarian intervention to stop grave human rights abuses should only be used after multilateral diplomatic and economic measures have been exhausted. This is not currently the case. The United States played the central role in imposing both the UN sanctions on Libya (finally lifted in 1999) and the prolonged, inhumane embargo on Iraq, while blocking sanctions against Israel, Turkey, and other allies that are serious human rights abusers<sup>14</sup>. If Washington truly cares about furthering human rights, it must do so collectively and in a more even-handed manner.

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<sup>14</sup> Leppgold, Joseph, and Thomas G. Weiss, eds. Styles of Conflict Management and Changing World Politics. Albany, N.Y., 1998, pp 56-9

Finally, the United States ought to strengthen its own participation in international human rights agreements and support the international institutions that enforce such agreements. In the long term, stronger international agreements and institutions will save more lives than questionable ad hoc military interventions. The U.S. should sign and ratify the agreement establishing the International Criminal Court and the 1990 Convention on the Rights of the Child. The Senate should remove the reservations added to treaties (such as the International Covenant on Civil and Political Rights and the Rome Statute) that render them non-self-executing or nonenforceable under U.S. law. At present, U.S. courts have been following a double standard of imposing liability against foreign officials accused of committing serious international human rights abuses, while refusing to recognize such claims brought against U. S. officials. To encourage other nations to apply international human rights law in their domestic courts, we must apply it in our courts.

Changing U.S. foreign policy along these lines will not be easy and is unlikely to happen quickly. However, at the start of a century in which scores of millions have been killed in military conflicts and with the rise of new and extreme ethnic, national, and religious conflicts, multilateral cooperation through a more democratic United Nations is more important than ever.

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