

# **The Legal Aspects of Humanitarian Intervention Based on the Intervention in Somalia**

What significance does the intervention in Somalia have for the  
legal status of humanitarian intervention?

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# Table of Contents

|                 |   |                  |
|-----------------|---|------------------|
| <b><u>1</u></b> | <b><u>INTRODUCTION.....</u></b>   | <b><u>1</u></b>  |
| 1.1             | THE INTERVENTION IN SOMALIA.....  | 1                |
| 1.2             | AIMS AND PURPOSES .....   | 2                |
| 1.3             | METHOD AND MATERIAL.....  | 3                |
| 1.4             | DELIMITATIONS .....   | 4                |
| 1.5             | TERMINOLOGY .....   | 4                |
| <b><u>2</u></b> | <b><u>GENERALLY ON HUMANITARIAN INTERVENTION .....</u></b>  | <b><u>6</u></b>  |
| 2.1             | DEVELOPMENT OF THE DOCTRINE OF HUMANITARIAN INTERVENTION.....   | 6                |
| 2.2             | THE UNITED NATIONS CHARTER .....  | 9                |
| 2.2.1           | THE UNITED NATIONS CHARTER AND ITS PURPOSES .....   | 9                |
| 2.2.2           | THE PRINCIPLE OF NON-INTERVENTION .....   | 10               |
| 2.2.3           | THE PROHIBITION ON THE USE OF FORCE.....  | 11               |
| 2.3             | AUTHORITY .....   | 15               |
| 2.3.1           | UNITED NATIONS SECURITY COUNCIL .....   | 15               |
| 2.3.2           | OTHER MEANS OF AUTHORITY .....  | 16               |
| 2.3.3           | UNAUTHORIZED INTERVENTIONS .....  | 17               |
| 2.4             | SOVEREIGNTY .....   | 19               |
| 2.5             | IS IT POSSIBLE TO ESTABLISH CRITERIA ON HUMANITARIAN INTERVENTION? .....  | 21               |
| <b><u>3</u></b> | <b><u>THE INTERVENTION IN SOMALIA .....</u></b>   | <b><u>22</u></b> |
| 3.1             | COURSE OF EVENTS .....  | 22               |
| 3.2             | WAS THE INTERVENTION IN SOMALIA A LAWFUL HUMANITARIAN INTERVENTION?..   | 25               |
| <b><u>4</u></b> | <b><u>WHAT SIGNIFICANCE DOES THE INTERVENTION HAVE IN REGARDS TO<br/>THE LEGAL STATUS OF HUMANITARIAN INTERVENTION AND LATER<br/>INTERVENTIONS? .....</u></b> | <b><u>33</u></b> |
| 4.1             | IN REGARDS TO THE LEGAL STATUS OF HUMANITARIAN INTERVENTION .....   | 33               |
| 4.2             | IN REGARDS TO LATER INTERVENTIONS .....   | 38               |
| <b><u>5</u></b> | <b><u>DE LEGE FERENDA; HUMANITARIAN INTERVENTIONS IN THE FUTURE... </u></b>   | <b><u>41</u></b> |
| <b><u>6</u></b> | <b><u>CONCLUSION .....</u></b>  | <b><u>43</u></b> |
| <b><u>7</u></b> | <b><u>BIBLIOGRAPHY .....</u></b>  | <b><u>45</u></b> |

# 1 Introduction

## 1.1 The intervention in Somalia

The intervention in Somalia represents a historical moment in the development of humanitarian intervention as it was the first time the United Nations Security Council authorized a Chapter VII intervention, without the consent of a government, for explicitly humanitarian reasons.

The humanitarian catastrophe the Somali people experienced between 1991 and 1992 was a result of the civil war and the breakdown of the government after a coup by two clan leaders, Aideed and Mahdi, in January 1991. After taking over the government, a war broke out between Aideed and Mahdi which split the capital Mogadishu into two armed camps. The civil war devastated Somalia's agricultural production and, combined with a drought, killed between 300,000 and 350,000 people in 1992.<sup>1</sup>

On 3 December 1992, the Security Council adopted Resolution 794, which authorized the use of force under Chapter VII of the United Nations Charter, stating that "the magnitude of the human tragedy caused by the conflict in Somalia...constitutes a threat to international peace and security".<sup>2</sup> The resolution allowed for an intervention, and was followed by the U.S. led Operation Restore Hope and subsequent United Nations Operations in Somalia (UNOSOM II).

Attempts to reach a ceasefire proved difficult, and the UN saw the need to support Somalia in building a constitutional state. This resulted in Security Council Resolution 814. As the most ambitious mandate ever given to a UN mission, Resolution 814

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<sup>1</sup> N.J. Wheeler, *Saving Strangers Humanitarian Intervention in International Society* (Oxford University Press, New York 2000) p.174.

<sup>2</sup> Security Council Resolution 794, 3 December 1992, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N92/772/11/PDF/N9277211.pdf?OpenElement>

authorized the forces to rebuild the state.<sup>3</sup> However, as the U.S. forces started to experience casualties, the intervention faced strong criticism from the U.S. Congress and President Clinton decided to withdraw all U.S. forces.<sup>4</sup> Additionally, the UN attempts at state-building faced heavy opposition, so that, by February 1995, the UN had also withdrawn from Somalia.

The aftermath of the intervention gave rise to a discussion about the intervention's success. Some claim that the intervention came too late and that the starvation had already passed its worst point by the time Resolution 794 was adopted.<sup>5</sup> On the other hand, the Secretary-General claimed in a report to the Security Council on 26 January 1993, that the mission had been fulfilled and humanitarian aid had reached those most in need.<sup>6</sup> The Refugee Study Group concluded in a report in November 1994 that around four million Somalis had faced food insecurity and risk of disease between 1992 and 1993. Out of this number "330,000...were at imminent risk of death...Of those at imminent risk, 110,000 lives were sustained (deaths averted) due to health, food and other interventions that reached over one million Somalis".<sup>7</sup>

The significance of the intervention and its lawfulness also became a subject of debate and will be discussed in this thesis.

## 1.2 Aims and Purposes

This thesis will address the legal aspects of humanitarian intervention, and the development of the doctrine of humanitarian intervention as a possible legalized use of force in international law. The thesis has two main purposes: First it will look at the legal material concerning humanitarian intervention and address the question of whether or not the intervention in Somalia was legal. Secondly, the thesis will discuss the

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<sup>3</sup> Security Council Resolution 814, 26 March 1993, available at:

<http://daccessdds.un.org/doc/UNDOC/GEN/N93/226/18/IMG/N9322618.pdf?OpenElement>

<sup>4</sup> J.L. Hirsch and R.B. Oakley, *Somalia and Operation Restore Hope: Reflections on Peacemaking and Peacekeeping*, (United States Institute of Peace, Washington, 1995) p.129 cited in Wheeler, *supra* note 1, p.199.

<sup>5</sup> M. Bryden, 'Somalia: The Wages of Failure' 94 *Current History* (1995) p.148.

<sup>6</sup> Wheeler, *supra* note 1, p.188.

<sup>7</sup> Quoted in Wheeler, *supra* note 1, p.189.

significance the intervention has had for later interventions and for the legal status of humanitarian intervention in general.

### 1.3 Method and Material

The thesis will discuss the above mentioned questions using positivistic legal methods. The traditional starting point in international law is Article 38 of the Statute of the International Court of Justice (ICJ). Article 38 lists international conventions, international custom and general principles of law as primary sources. Judicial decisions and teachings of the most highly qualified publicists are cited as secondary sources.<sup>8</sup> Consequently I have studied treaty law, case law, customary law, and legal doctrines. I also studied the works of prominent scholars such as Nicholas J. Wheeler, Adam Roberts and Simon Chesterman.

In interpreting international conventions and treaties, the thesis will use the method established in the Vienna Convention on The Law of Treaties.<sup>9</sup>

In regards to humanitarian intervention, the starting point is the United Nations Charter Article 2(4), and thus this thesis studies the Charter in depth. Resolutions by the Security Council and the General Assembly are important in understanding the Charter, and emphasis has been laid on such resolutions. Security Council resolutions are legally binding, while resolutions by the General Assembly are non-binding. As not legally binding, General Assembly resolutions are part of the body of international law referred to as soft law. Soft law may consist of standards, commitments, declarations and

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<sup>8</sup> Statute of the International Court of Justice, (1945) Article 38 available at: <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>

<sup>9</sup> Vienna Convention on the Law of Treaties, (1969) Article 31 "1. A treaty should be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. 3. There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties.

resolutions, which do not impose legally binding obligations.<sup>10</sup> Although soft law does not stipulate any rights or obligations, soft law has been important in international law, as it has often laid the ground for formulation of treaties and customary law.<sup>11</sup>

#### 1.4 Delimitations

The issue of humanitarian intervention includes both the aspect of legality and the aspect of legitimacy. This thesis will focus on the aspect of legality, but the issue of legitimacy is at times intertwined with legality and will thus have an impact on this. The issue of legitimacy will therefore be considered when it is relevant.

Since the Security Council authorized the intervention in Somalia, this thesis will not go in depth on the subject of unauthorized interventions.

Furthermore, the thesis will only concentrate on those interventions that involve the use of force and will not deal with other interferences that are sometimes also defined as humanitarian interventions.

#### 1.5 Terminology

The legal status of humanitarian intervention has been a subject of debate among legal scholars.<sup>12</sup> Part of the disagreement can be rooted in the definition of humanitarian intervention. One recognized and well-cited definition is Sean Murphy's definition of humanitarian intervention as the "threat or use of force by a state, group of states, or

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4. A special meaning shall be given to a term if it is established that the parties so intended." Available at: [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)

<sup>10</sup> A. Cassese, *International Law*, (Oxford University Press, New York, 2001) pp.160-161.

<sup>11</sup> For more on soft law as a part of international law see for instance *Ibid*; M. Dixon, *Textbook on International Law* (Blackstone Press Limited, London 3ed 1996) pp.44-45.

<sup>12</sup> See for instance J. Shen et. al 'The Non-Intervention Principles and Humanitarian Interventions under International Law' 7:1 *International Legal Theory* (2001) pp.1-90; A. Roberts, 'The so-called 'Right' of Humanitarian Intervention' 3 *Yearbook of International Humanitarian Law* (2000) pp.3-51; S. Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford University Press, New York, 2001) pp.45-87.

international organizations primarily for the purpose of protecting the nationals of the target state from widespread deprivations of international recognized human rights”.<sup>13</sup> Although this is the most accepted definition, similar criteria can also be found in other definitions.<sup>14</sup>

As the definitions on humanitarian intervention show, most agree that humanitarian intervention is carried out with aims of ending widespread deprivations of international recognized human rights of individuals other than its own citizens. This element has also been emphasized by the Security Council when authorizing interventions. For instance, Resolution 794 points to the “magnitude of the human tragedy in Somalia” and “reports of widespread violations of international humanitarian law”.<sup>15</sup>

The controversy relates partially to the use of force in humanitarian interventions. Some argue that interventions which resort to force cannot be defined as humanitarian interventions.<sup>16</sup> Others define humanitarian intervention without reference to the use of force,<sup>17</sup> thereby placing interventions by other means under the term humanitarian intervention. However, most interventions that claim to be humanitarian interventions do resort to force, and most definitions include the use of force.<sup>18</sup> Furthermore, it is also mainly in regards to interventions involving the use of force that the controversy around humanitarian interventions occurs.

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<sup>13</sup> S.D. Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order* (University of Pennsylvania Press, Philadelphia, 1996) pp.11-12. The definition is also used by several other legal scholars, see for instance P.C. Simons, ‘Humanitarian Intervention: A Review of Literature’ 01-2 *Ploughshares Working Paper* (2001) p.2; H. Rahmouni, ‘Searching for a Legal International For Humanitarian Intervention’ available at: <http://www.hg.org/article.asp?id=4826>

<sup>14</sup> See for instance Kirchner’s definition “coercive action by states involving the use of armed force in another state without the consent of the latter for the purpose of preventing or putting to a halt gross and systematic violations of human rights and international humanitarian law” in S. Kirchner, ‘The Human Rights Dimensions of International Peace and Security and Humanitarian Intervention after 9/11’, published 24 October 2004, p 12, available at: <http://jha.ac/articles/a143.pdf> and Roberts’ definition “coercive action by one or more states involving the use of armed force in another state without the consent of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants” in Roberts, *supra* note 12, p.5.

<sup>15</sup> See note 2.

<sup>16</sup> For support of this view see for instance A. Ryniker, ‘The ICRC’s position on “humanitarian intervention”’ 83 *International Review of the Red Cross* (2001) pp.527-532.

<sup>17</sup> B. Parekh, ‘Rethinking Humanitarian Intervention’ 18/1 *International Political Science Review* (1997) p.54.

<sup>18</sup> See notes 13 and 14.

Interventions are usually carried out without the consent of the host state. Although this is somewhat debated,<sup>19</sup> it is commonly understood and has been highlighted by several scholars.<sup>20</sup>

Moreover, both collective interventions with prior UN Security Council authorization and unilateral interventions by one or more states without prior authorization have been defined as humanitarian interventions. Since these situations are both relevant to the discussion of the legality of humanitarian intervention, in this thesis the term humanitarian intervention will apply to both these situations.

This shows that a humanitarian intervention has to be conducted with aims of ending widespread deprivations of international recognized human rights of individuals other than its own citizens, without the consent from the state being intervened and involving the use of armed force by international organizations or states. For the purpose of this thesis, these elements will be used to define a humanitarian intervention.

## **2 Generally on humanitarian intervention**

### **2.1 Development of the doctrine of humanitarian intervention**

The origins of the doctrine of humanitarian intervention date back to the 17th-century international lawyer, Hugo Grotius. With his book *De Jure Belli est Pacis*, Grotius has been named the Father of International Law. Grotius claimed that the principle of sovereignty could be restricted by principles of humanity and considered that: “whether a war for the subjects of another be just, for the purpose of defending them from injuries by their ruler...if a tyrant...practices atrocities towards his subject, which no just man

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<sup>19</sup> See for instance Chesterman, *supra* note 12 pp. 9, 66-69; Roberts, *supra* note 12 pp.5-6.

<sup>20</sup> See note 14.



can approve, the right of human social connexion is not cut off in such case...It would not follow that others may not take up arms for them”.<sup>21</sup>

The tendency of states to intervene in less civilized states is typical for the first cases of possible humanitarian interventions occurring in the 19th century, such as the invasion of Turkey in 1830 by Great Britain, France and Russia, and the invasion of Syria in 1860 and 61 by France.<sup>22</sup>

During the Cold War, there are three interventions that have been discussed as possible humanitarian interventions; India’s intervention in Pakistan, Vietnam’s intervention in Cambodia and the Tanzanian intervention in Uganda. However, none of these interventions was justified on the grounds of humanitarian intervention; instead they invoked claims of self-defense.<sup>23</sup>

The end of the Cold War led to the end of the conflict between the United States and the Soviet Union, making it easier for the Security Council to act. The Council played a central role after the Cold War, authorizing interventions in Iraq, Somalia and Kosovo.

The intervention in Iraq in 1991 is significant in the development of humanitarian intervention because it was the first time the Security Council recognized that internal repression could have transboundary consequences that threatened “international peace and security”.<sup>24</sup>

While the Security Council played an important part in the intervention in Somalia, it became a bystander in the genocide in Rwanda a few years later. The UN withdrew most of its peacekeeping force; the United Nations Assistance Mission for Rwanda

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<sup>21</sup> H. Grotius, *De Jure Belli est Pacis*, quoted in F.K. Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (Kluwer Law International, The Hague, 1999) p.35.

<sup>22</sup> R.B. Lillich, *International Human Rights Problems of Law, Policy and Practice* (Little, Brown and Company, Boston, 1991) pp.596-597.

<sup>23</sup> See Wheeler, *supra* note 1, pp.60-65, 85-89, 118-119.

<sup>24</sup> Security Council Resolution 688, 5 April 1991, *available at*:

<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/596/24/IMG/NR059624.pdf?OpenElement>

(UNAMIR),<sup>25</sup> leaving the civilians to their own fate. In the aftermath of the genocide the UN received massive criticism for its failure to take action.<sup>26</sup>

The discussion about humanitarian intervention took a new turn in March 1999, when NATO went to war against the Federal Republic of Yugoslavia and started its bombing campaign in Kosovo. This was the first time a group of states justified the use of force explicitly on humanitarian grounds and intervened without Security Council authorization. NATO justified its intervention in Kosovo by arguing that the intervention aimed to avert a humanitarian catastrophe, that NATO's credibility was at stake, that the ethnic cleansing in Kosovo posed a long-term threat to European security, and that NATO's actions were in conformity with existing Security Council resolutions.<sup>27</sup>

A more recent development in the field of humanitarian intervention is the doctrine of the Responsibility to Protect (R2P). It is an attempt to reconcile the concept of sovereignty with a state's duty to protect its citizens. It had its starting point in the International Commission on Intervention and State Sovereignty (ICISS), which was established in 2000. The Commission was created as a response to UN Secretary-General Kofi Annan's concerns on how to respond to massive human rights violations. In 2001, the Commission issued its report, *The Responsibility to Protect*,<sup>28</sup> where it recommended to the Secretary-General that he initiate steps to develop a doctrine on humanitarian intervention and laid down the principles the doctrine should be based on. The report viewed sovereignty as an obstacle to humanitarian intervention and wanted the term humanitarian intervention to be replaced with a new responsibility to protect. Thus, sovereignty was not conceived of as a right, but rather as a duty to protect. In 2004 the UN High-Level Panel on Threats, Challenges and Change took up the report and spoke of "an emerging norm of collective international responsibility" in the face of

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<sup>25</sup> Security Council Resolution 912, 21 April 1994, available at:

<http://daccessdds.un.org/doc/UNDOC/GEN/N94/190/85/PDF/N9419085.pdf?OpenElement>

<sup>26</sup> Report of the Independent Inquiry Into the Actions of the United Nations During the 1994 Genocide in Rwanda, 16 December 1999, S/1999/1257, available at:

<http://daccessdds.un.org/doc/UNDOC/GEN/N99/395/47/IMG/N9939547.pdf?OpenElement>

<sup>27</sup> Wheeler, *supra* note 1, p.265.

human right abuses.<sup>29</sup> A modified version of the R2P was acknowledged by the General Assembly in the Outcome Document at the UN World Summit in 2005.<sup>30</sup>

The significance of the R2P for the development of humanitarian intervention is limited for two reasons: First and foremost, the Security Council has not yet adopted the R2P, consequently it does not represent legally binding criteria. Secondly, the R2P covers situations in which the intervening states do not resort to force, and thus embraces situations other than just humanitarian interventions.

## 2.2 The United Nations Charter

### 2.2.1 The United Nations Charter and its Purposes

The United Nations Charter entered into force on 24 October 1945. The Charter is a treaty between the states parties to it, and founded the United Nations as a multipurpose organization, replacing the former League of Nations.<sup>31</sup>

The United Nations Charter does not explicitly address the question of humanitarian intervention. However, the Charter sets out a number of Purposes and Principles which are decisive for the right of humanitarian intervention. The main purposes of the Charter are those listed in Article 1.<sup>32</sup> The first is to maintain international peace and security. In order to achieve this, Article 1(1) calls for the peaceful settlements of disputes and to take effective collective measures for the prevention and removal of threats to the peace. Article 1(2) states the principle of equal rights and self-determination of peoples, while the promotion and encouragement of the respect of human rights have their foundation in Article 1(3) of the Charter. Article 1(4) emphasizes the necessity of consensus in order to reach these common goals.

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<sup>28</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, (2001) available at: <http://www.iciss.ca/report-en.asp>

<sup>29</sup> Report of The High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, UN Doc. A/59/565 (2004) para 201, available at: <http://www.un.org/secureworld/>

<sup>30</sup> General Assembly Resolution 60/1 15 September 2005, *World Summit Outcome*, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>

<sup>31</sup> L.M. Goodrich *The United Nations* (Stevens and Sons Limited, London, 1960) pp.28-29.

<sup>32</sup> Charter of the United Nations (1945) Article 1, available at: <http://www.un.org/aboutun/charter/>

Articles 1(2) – 1(4) are seen both as means to maintain international peace and security and as purposes in their own right.<sup>33</sup>

### 2.2.2 The Principle of Non-intervention

The UN Charter Article 2(7) establishes the principle of non-intervention by stating that “[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state...but this principle shall not prejudice the application of enforcement measures under Chapter VII”. The principle of non-intervention has also been upheld by the UN in several other instances. For example, in the non-binding Friendly Relations Declaration, the General Assembly is “[c]onvinced that the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threatens international peace and security”.<sup>34</sup>

The principle of non-intervention has also received general recognition as a principle of customary international law, established by the ICJ in the *Nicaragua v. United States* case.<sup>35</sup> The case is based on a suit by Nicaragua against the U.S. for violating the principles of non-intervention and non-use of force in supporting a group of Nicaraguan rebels with financial, military and economic assistance. In its decision, the ICJ observed that “[t]he principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference...the Court considers that it is part and parcel of customary international law” (para 202).

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<sup>33</sup> B.Simma *et. al* (eds) *The Charter of the United Nations A Commentary Volume 1* (Oxford University Press, New York, 2002, 2.ed) p.40.

<sup>34</sup> Declaration of Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations, General Assembly Res. 2625, 24 October 1970, available at:

<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement>

<sup>35</sup> *Military and Paramilitary Activities in and Against Nicaragua*, (Nicaragua v. The United States) 27 June 1986, ICJ, available at: <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=nus&case=70&k=66>

Both as a principle of the UN Charter and as a principle of customary law, the rule of non-intervention stands as an obstacle to any humanitarian intervention not authorized by the Security Council. Furthermore, the principle of non-intervention has by some been considered a part of jus cogens,<sup>36</sup> meaning it is a peremptory norm that cannot be modified or derogated from. The principle has been the subject of discussion in many interventions, as states question whether or not the matter at stake is “essentially within the domestic jurisdiction” of the state being intervened. The principle was heavily debated during the adoption of Security Council Resolution 688 in connection with the intervention in Iraq. Some states on the Council worried that the resolution would violate Article 2(7) and therefore set a dangerous precedent for future Security Council actions. The states in support of the resolution relied on the argument that the transboundary implications constituted a threat to “international peace and security”.<sup>37</sup> Regarding the intervention in Somalia, the principle was discussed, but did not become an obstacle to intervention as the Security Council took the view that, since the government had ceased to exist, there was no breach of the non-intervention rule.<sup>38</sup>

### 2.2.3 The Prohibition on the Use of Force

Article 2(4) of the UN Charter prohibits the use of force by establishing that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”. The Charter has two exceptions to this, namely when acting in self-defense in accordance with Article 51, or when acting with the authorization of the Security Council as set out in Chapter VII.

The wording in Article 2(4) can be interpreted as an absolute prohibition of all other use of force against other states. However, some argue that humanitarian intervention is not covered by Article 2(4). One of them Lillich, points out that one of the Charter’s main purposes is the protection of human rights, and humanitarian intervention is therefore

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<sup>36</sup> See the debate around this in International Legal Theory, *supra* note 12; See also Separate Opinion of Judge Sette-Camara in *Nicaragua v The United States* p.199.

<sup>37</sup> Wheeler, *supra* note 1 p.144.

<sup>38</sup> *Ibid.*, p.200. This will be elaborated in section 4.1.

not “inconsistent” with the Charter.<sup>39</sup> Accordingly, humanitarian intervention is then only prohibited by Article 2(4) if the intervention affects the “territorial integrity or political independence of any state”. It is argued that a humanitarian intervention seeks neither a territorial change nor a challenge to the political independence of the state involved.<sup>40</sup> Against this interpretation is first and foremost that the achievements accomplished by a humanitarian intervention will usually require a new government and in some cases even secession, and the intervention thereby affects the State’s “territorial integrity or political independence”. Furthermore, the majority holds that Article 2(4) prohibits all use of force,<sup>41</sup> and thus protects states from all forms of forceful interference by other states. A support to this interpretation is also that the phrase “against the territorial integrity or political independence” was added to Article 2(4) by the request from small states wanting a stronger guarantee against intervention.<sup>42</sup>

The argument that the use of force is allowed if it is not directed against the “territorial integrity or political independence of any state” was made by Great Britain in the *Corfu Channel* case.<sup>43</sup> However, the plea that a minesweeping operation did not threaten the “territorial integrity or political independence” of Albania was dismissed by the ICJ.

Article 2(4) thereby prohibits all use of force unless authorized by the Security Council or when acting in self-defense.

It is established in international customary law that the use of force also has to meet the criteria of necessity and proportionality. Necessity is commonly described as

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<sup>39</sup> Lillich, *supra* note 22 p.598.

<sup>40</sup> *Ibid.*, p.585.

<sup>41</sup> See for instance Simma, *supra* note 33, p.123; R. Goodman, ‘Humanitarian Intervention and Pretexts for War’, 100:1 *The American Journal of International Law* (2006) pp.111-112; Chesterman, *supra* note 12 p.47-50.

<sup>42</sup> Lillich, *supra* note 22 p.591.

<sup>43</sup> *Corfu Channel*, (*United Kingdom of Great Britain and Northern Ireland v Albania*), 9 April 1949, available at: <http://www.icj-cij.org/docket/index.php?p1=3&code=cc&case=1&k=cd>

demanding that the use of force must be the last resort,<sup>44</sup> while proportionality prohibits force that is excessive in relation to the advantage anticipated.<sup>45</sup>

The question is whether this applies to Security Council decisions under Chapter VII of the Charter.

The UN Charter Article 42 states explicitly that the Council can take such action as “may be necessary” to maintain or restore international peace and security. The ordinary meaning of the words thus indicates that it is in the Security Council’s own discretion to determine whether its measures are necessary.

The criterion of proportionality is not mentioned as such in the Charter. Nevertheless, Articles 39 and 42 demand that forceful actions shall only be used in order to maintain or restore international peace and security in the case of a threat to the peace, breach of the peace or act of aggression. These articles can thereby be read as constituting a criterion of proportionality.<sup>46</sup> However, Article 42 allows for military action if the Council “consider” that measures under Article 41 are inadequate, which seems to leave a broad margin of appreciation to the Security Council.<sup>47</sup>

Article 1(1) of the Charter states that one of the main purposes of the UN is to take collective measures to maintain international peace and security “in conformity with the principles of justice and international law”. This implies that the criteria of international customary law shall apply to the Council’s decisions.

The question of necessity and proportionality in regards to the Council’s decisions has also been debated in legal literature. On the one hand, it is argued that the Council is in general free not to respect international law when acting under Chapter VII.<sup>48</sup> On the

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<sup>44</sup> J. Gardam, *Necessity, Proportionality and the Use of Force by States* (Cambridge University Press, Cambridge, 2004) pp.4-7.

<sup>45</sup> E.K. Kwakwa, *The International Law of Armed Conflict: Personal and Material Fields of Application* (Kluwer Academic Publishers, Dordrecht, 1992) p.38.

<sup>46</sup> For support of this interpretation see Gardam, *supra* note 44, p.201.

<sup>47</sup> Simma, *supra* note 33, p.712.

<sup>48</sup> *Ibid.*, 711.

other hand, the majority of legal authors claim that the Council is subject to international law regarding its decisions, and any decision to resort to force is thereby governed by the principles of necessity and proportionality.<sup>49</sup>

Furthermore, if the principles of necessity and proportionality are applied, it is likely that the Security Council will authorize the use of force in fewer cases, which will be in conformity with the prohibition against the use of force and the principle of non-intervention.

Based on the UN Charter and legal writings on the interpretations of the Charter, the conclusion is that the criteria of necessity and proportionality apply to the decisions of the Security Council, though with a broad margin of appreciation for the Council.

In international customary law, necessity and proportionality apply not only to the decision to use force, but also to the way force is used when authorized.<sup>50</sup>

It is established that operations that have been authorized by the Security Council, but remaining under national control, such as Operation Restore Hope, are governed by their international humanitarian law obligations.<sup>51</sup> Such operations thereby have to apply the principles of necessity and proportionality in their use of force.

After the adoption of the Charter, it was somewhat debated whether forces under UN control, such as UNOSOM II, should be required to apply the principles of necessity and proportionality.<sup>52</sup> This was clarified by the UN Secretary-General in 1999 when the Secretary-General stated in a bulletin that the “fundamental principles and rules of

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<sup>49</sup> See for instance M.E. O’Connell, ‘The United Nations Security Council and the Authorization of Force’ in N. Blokker and N. Schrijver (eds), *The Security Council and the Use of Force, Theory and Reality – A Need for Change?* (Martinus Nijhoff Publishers, Leiden, 2005) pp. 48, 58; J. Gardam, ‘Legal Restraints on Security Council Military Enforcement Action’, 17:2 *Michigan Journal of International Law* (1996) p.312; F. Tesón, *Humanitarian Intervention* (Transnational Publishers, Ardsley, 2005, 3.ed) pp.285-286; D. Schweigman, *The Authority of the Security Council under Chapter VII of the UN Charter* (Kluwer Law International, The Hague, 2001) p.191.

<sup>50</sup> O’Connell, *supra* note 49, p.58.

<sup>51</sup> Gardam, *supra* note 44, p.215.

<sup>52</sup> See for instance *ibid.*, pp.215-222.



international humanitarian law set out in the present bulletin are applicable to United Nations forces”.<sup>53</sup> The bulletin references the principles of necessity and proportionality in that it prohibits damage that would be “excessive in relation to the concrete and direct military advantage anticipated”,<sup>54</sup> and “methods of warfare which may cause superfluous injury or unnecessary suffering”.<sup>55</sup>

Also, with considerations for the consistency of the Charter, the principles of necessity and proportionality should apply to the forces carrying out the authority vested in them by the Council, since the same criteria apply to the Council’s decision to resort to force.

The principles of necessity and proportionality therefore apply to forces authorized by the Security Council, whether under UN or state control.

## 2.3 Authority

### 2.3.1 United Nations Security Council

An important question in the debate on humanitarian intervention is the question of who should have the authority to authorize an intervention. The most obvious answer is the United Nations Security Council, which can authorize interventions through its Chapter VII powers. The Security Council authorized the intervention in Somalia, as it has done in several other occasions.

The Council’s experience in authorizing the use of force and its position in the international community would make it the most appropriate body to authorize an intervention. This was also emphasized by the ICISS in its report on the *Responsibility to Protect*, where the Commission said that it is “in [...] no doubt that there is no better or more appropriate body than the Security Council to deal with military intervention issues for human protection purposes”.<sup>56</sup>

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<sup>53</sup> Secretary-General’s Bulletin: *Observance by United Nations Forces of International Humanitarian Law*, 6 August 1999, (ST/SGB/1999/13), section 1.1, available at: <http://www.unhcr.org/refworld/publisher,UNSECGEN,,451bb5724,0.html>

<sup>54</sup> *Ibid.*, section 5.6.

<sup>55</sup> *Ibid.*, section 6.3.

<sup>56</sup> See note 28, p.49.

Since the Council authorizes the use of force in other circumstances, considerations to the consistency of the system and the legitimacy of the intervention, make it obvious that any humanitarian intervention should be authorized by the Security Council.

### 2.3.2 Other Means of Authority

Problems may occur when the Security Council is unable to achieve the required number of votes to authorize an intervention and in situations in which states on the Council are unwilling to intervene. In these situations, the question is whether or not other bodies can authorize an intervention or if states can act unilaterally.

The General Assembly has, in such situations, powers to recommend collective measures through its Uniting for Peace Procedures if there is a threat to the peace, breach of the peace or act of aggression. Those procedures are laid down in General Assembly Resolution 377. The resolution reaffirms the Security Council's primary responsibility for the maintenance of international peace and security, but is conscious that a failure by the Council to fulfill its responsibility does not relieve the member states of their responsibility to maintain international peace and security.<sup>57</sup> The resolution specifically says that the General Assembly can recommend the use of armed forces in case of a breach of the peace or act of aggression, meaning that the Assembly can recommend its member states to intervene if necessary. However, it is important to notice that the General Assembly's resolutions are not legally binding, and a resolution under the Uniting for Peace Procedures will not impose any obligations on the member states.

Furthermore, it would be difficult to achieve the necessary two-thirds majority in the General Assembly in a situation where there is no majority in the Security Council. Still, if the General Assembly can gain the necessary majority, an authorization from the Assembly would have more legitimacy and thus be a better alternative than an unauthorized intervention.

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<sup>57</sup> General Assembly Resolution 377, 3 November 1950 *available at:*  
<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/059/75/IMG/NR005975.pdf?OpenElement>

Other bodies of authority could be regional arrangements or agencies. The UN Charter Article 53(1) provides that the Security Council may make use of “regional arrangements or agencies for enforcement action”. The article further states that no such enforcement action shall be taken “without the authorization of the Security Council”. This makes regional arrangements dependent on authorization from the Security Council. In a situation where the Council cannot gain the necessary majority or is unwilling to act, it may seem unlikely that the Council would gain majority to authorize the use of force by regional arrangement or agencies. Yet, there might be situations where regional bodies are the most appropriate to intervene and would therefore be authorized by the Council. In such situations the regional body would have the legality and legitimacy of a Security Council authorization and thereby have the authority to intervene.

### 2.3.3 Unauthorized Interventions

An unauthorized intervention cannot gain legality through the UN Charter. There is no treaty that deals directly with humanitarian interventions. Still, numerous treaties protect human rights, such as the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.<sup>58</sup> These and other treaties set out a set of human rights that shall be granted to all human beings, but they do not give the international community any right to intervene if those human rights are being violated. The convention that comes closest to establishing any enforcement measures is the Genocide Convention.<sup>59</sup> In Article 1 of the Convention, the international community undertakes to “prevent and punish” genocide. However, Article VIII of the Convention puts this responsibility within the UN system as it provides that “[a]ny Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention

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<sup>58</sup> International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, General Assembly Resolution 2200, 16 December 1966, *available at*: <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/005/03/IMG/NR000503.pdf?OpenElement>

<sup>59</sup> The Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly Resolution 260 A (III) 9 December 1948, *available at*: <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/044/31/IMG/NR004431.pdf?OpenElement>

and suppression of acts of genocide...”. The Genocide Convention does thereby not legalize unauthorized interventions.

The question is then if unauthorized humanitarian interventions are legal as a part of international customary law.

Firstly, this requires an assessment of whether or not a right of humanitarian intervention existed prior to the UN Charter, and if this right has survived the Charter. Different arguments of the survival of a right of intervention are presented by legal authors,<sup>60</sup> but the majority of scholars argue against this, pointing to the fact that evidence of this right cannot be found.<sup>61</sup> That a right of unauthorized interventions did not exist was also determined by the ICJ in the *Corfu Channel* case, where the Court said that the alleged right of intervention “cannot, whatever be the present defects in international organization, find a place in international law”.<sup>62</sup>

The conclusion is therefore that a right of humanitarian intervention did not exist prior to the UN Charter.

The next subject to be considered is if a right of unauthorized humanitarian intervention has evolved after the adoption of the Charter.

The prohibition of the use of force in Article 2(4) of the Charter has now considerable support as a principle of jus cogens.<sup>63</sup> According to the Vienna Convention Article 53, a norm of jus cogens can only be modified by another norm of jus cogens. For a right of unauthorized humanitarian intervention to be legal, the right has to have the status of jus cogens. The right of unauthorized humanitarian intervention was dismissed by the ICJ

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<sup>60</sup> Amy Eckert, ‘The Non-intervention Principle and International Humanitarian Interventions’ in Shen *et. al*, *supra* note 12, p.54.

<sup>61</sup> See for instance Chesterman, *supra* note 12, pp.53-57; P. Hilpold, ‘Humanitarian Intervention: Is There a Need for Legal Reappraisal?’ 12:3 *European Journal of International Law* (2001) p.443; Goodman, *supra*, note 41, p.111-112.

<sup>62</sup> See note 43, Merits, p.35.

<sup>63</sup> Shen *et. al*, *supra* note 12 p.1; Chesterman, *supra* note 12, p.60; Kirchner, *supra* note 14, p.9.

in the *Nicaragua v. The United States* case,<sup>64</sup> and no state practice shows that a right of unauthorized humanitarian intervention has gained the status of jus cogens.<sup>65</sup>

The conclusion is that there is no right of unauthorized humanitarian intervention in international customary law.

Unauthorized humanitarian interventions are thereby not a lawful use of force in international law.

## 2.4 Sovereignty

One of the main obstacles to the right of humanitarian intervention has been the principle of sovereignty. Sovereignty has long been recognized as a principle of customary law. Traditionally, in international law sovereignty was understood as legal independence from all foreign powers.<sup>66</sup> This understanding is strongly influenced by Bodin's definition of sovereignty as "the absolute and perpetual power of a state".<sup>67</sup>

Sovereignty is now embodied in the UN Charter Article 2(1) as one of the main principles of the Charter.<sup>68</sup> Article 2(1) states the "sovereign equality" of its Members and codifies the legal right of states to conduct their internal affairs without outside interference. However, the UN Charter also led to a change in the perception of sovereignty. The traditional definition of sovereignty included the right to go to war,<sup>69</sup> but Article 2(4) of the Charter prohibits the use of force. Sovereignty thus became a limited concept and subject to international law. Another limitation of the principle of sovereignty was the development of the protection of human rights. As one of the main

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<sup>64</sup> See note 35, para 268.

<sup>65</sup> See for instance Chesterman, *supra* note 12 pp.60-87; N. Schrijver, 'NATO in Kosovo: Humanitarian Intervention Turns into Von Clausewitz War, 1:3 *International Law Association Forum* (1999), p.157; Kirchner, *supra* note 14, pp.26-30.

<sup>66</sup> Simma, *supra*, note 33, p.71.

<sup>67</sup> Jean Bodin, *Sechs Bücher Über Den Staat*, (P.C Mayer- Tasch ed.1576), quoted in F.X. Perrez, *Cooperative Sovereignty, From Independence to Interdependence in the Structure of International Environmental Law* (Kluwer Law International, The Hague, 2000) p.14.

<sup>68</sup> UN Charter Article 2(1) "The Organization is based on the principle of the sovereign equality of all its Members".

<sup>69</sup> Simma, *supra*, note 33, p.72.

purposes of the UN Charter, the protection of human rights became a responsibility for the international community.

This leads to the question if sovereignty has become conditional on the respect of human rights.

The formulation of the principle of sovereignty in the Charter does not give support to a conditional right of sovereignty. Article 2(1) says that the UN is based upon the “sovereign equality of all its Members” without placing any limitations on this principle. Nevertheless, the Security Council’s practice of military response to humanitarian crises may indicate that sovereignty is linked to the respect of human rights.<sup>70</sup> On the other hand, the Council’s lack of action in many situations where human rights have been violated might indicate that sovereignty outweighs human rights.

It is also argued that the principle of sovereignty has the status of *jus cogens* and can thus not be derogated from.<sup>71</sup> This implies that all humanitarian interventions are illegal, without regards to the gravity of human rights abuses that might be carried out inside a state. The view of such absolute sovereignty seems incompatible with the Charter’s commitment to promoting “universal respect for, and observance of, human rights and fundamental freedoms for all”,<sup>72</sup> which rather indicates that sovereignty comes with a responsibility to protect human rights.<sup>73</sup>

The conflict between sovereignty and the protection of human rights was the background for Secretary- General Kofi Annan’s speech to the General Assembly on the 54<sup>th</sup> session of the UN General Assembly in 1999. Annan addressed the problems with sovereignty and human rights, and said:

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<sup>70</sup> Simons, *supra* note 13, p.3.

<sup>71</sup> Shen *et. al*, *supra* note 12, pp.1-2.

<sup>72</sup> UN Charter Article 55(c).

<sup>73</sup> For support of this, *see for instance* Eckert, *supra* note 60, pp.50-52; E. McClean, ‘Responsibility to Protect: The Role of International Human Rights Law’ 13:1 *Journal of Conflict and Security Law* (2008) pp.128-129; A.J. Bellamy, ‘The Responsibility to Protect and the problem of military intervention’ 84:4, *International Affairs* (2008), pp.618-620.

“State sovereignty, in its most basic sense, is being redefined—not least by the forces of globalisation and international co-operation. States are now widely understood to be instruments at the service of their peoples, and not vice versa. At the same time individual sovereignty—by which I mean the fundamental freedom of each individual, enshrined in the charter of the UN and subsequent international treaties—has been enhanced by a renewed and spreading consciousness of individual rights. When we read the charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them”.<sup>74</sup>

In this particular sense, sovereignty cannot be understood as an absolute obstacle to external interference when the aim is to protect individuals from human right abuses.

This leads to the conclusion that the development of the protection of human rights has influenced the concept of sovereignty. With that in mind, sovereignty is still one of the fundamental principles of international law, both as a principle of customary law and as a principle of the UN Charter.

## 2.5 Is it possible to establish criteria on humanitarian intervention?

One of the most difficult and debated issues concerning humanitarian intervention is the criteria for when to intervene. Although many agree that there exists, in some cases, a right to intervene there is little consensus on which situations trigger this right.

As mentioned above, the UN Charter does not mention humanitarian intervention explicitly and does not establish any criteria for humanitarian intervention.

Several scholars have attempted to establish possible criteria for humanitarian intervention. One of the latest attempts was made by the ICISS in its report on the R2P. The first principle the ICISS sets out is that there must be “serious and irreparable harm” of either “large scale loss of life” or “large scale ethnic cleansing”.<sup>75</sup> The ICISS

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<sup>74</sup> K. Annan, *Two Concepts of Sovereignty*, printed in *The Economist* 18 September 1999.

<sup>75</sup> See note 28.

refers to this as the just cause threshold, and similar formulations can be found by legal authors who outline possible criteria.<sup>76</sup>

The ICISS further laid down that there must be a rightful intent, military intervention must be the last resort, and there must be proportionality in means as well as a reasonable chance of success.<sup>77</sup> Similar criteria can also be found in legal writings,<sup>78</sup> but neither these nor the criteria established by the ICISS have been affirmed as legally binding.

If such criteria should be established, there would also be a problem in regards to the content. Even if an agreement that there must be “serious and irreparable harm” could be reached, the question of which situations fulfill this criterion would remain. This illustrates problems that need to be solved if there shall be a legalization of criteria on humanitarian intervention. However, attempts such as those by ICISS show that it may be possible to establish criteria on humanitarian intervention in the future.

### **3 The intervention in Somalia**

#### **3.1 Course of events**

After the coup by Aideed and Mahdi, the United Somali Congress (USC) installed Mahdi as President. Aideed, who was the military leader of the USC, challenged Mahdi’s right to presidency, which caused war to break out. The worst fighting took place between November 1991 and March 1992, and during this period, UN

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<sup>76</sup> Wheeler formulates a criteria of “supreme humanitarian emergency” in Wheeler, *supra* note 1 p.34; Lillich states that “fundamental human rights are denied them, and the conscience of mankind is shocked and finds that cruelty and persecution intolerable” in Lillich, *supra* note 22, p.574.

<sup>77</sup> See note 28, Principle 2.

<sup>78</sup> See for instance G. Wilson-Roberts, ‘Humanitarian Intervention: Definitions and Criteria’ 3:1 *CSS Strategic Briefing Papers* (2000) p.2; P.C. Simons, *supra* note 13, pp.15-18; C.A.J. Coady ‘The Ethics of Armed Humanitarian Intervention’ 45, *Peaceworks* (2002) pp.24-31.



humanitarian agencies left Somalia as they feared for the security of the UN personnel.<sup>79</sup>

On 23 January 1992, the UN Security Council declared that the situation in Somalia constituted a “threat to international peace and security” and established an arms embargo under Chapter VII of the Charter.<sup>80</sup> However, this did not stop the fighting, as armed gangs occupied the streets of Mogadishu and the city collapsed in a state of lawlessness. The UN Secretary-General Boutros-Ghali then announced that the UN was sending troops to Somalia with or without the consent of the faction leaders.<sup>81</sup> This represented a shift from the previous strategy of negotiations, and was not welcomed by Aideed who refused to protect the 500 peacekeepers who arrived in September.<sup>82</sup>

The international involvement in Somalia took a new turn in mid- 1992 when the Bush Sr. Administration declared that the “starvation in Somalia is a major human tragedy” and that the U.S. would provide food for “those who desperately need it”.<sup>83</sup> The turning point that led to this statement was a telegram from the U.S. ambassador in Kenya describing the situation in Somali refugees’ camps along the Kenyan border.<sup>84</sup> The intense media attention that Bush’s statement created and the fact that Somalia was perceived as a low-risk, short-term operation created the backdrop for the U.S. plea to the UN for a mandate to send 30,000 troops to Somalia to provide protection for humanitarian relief.<sup>85</sup>

The U.S. offer resulted in Security Council Resolution 794 which authorized the Member States to use “all necessary means”, and thereby the use of force under Chapter VII. The Secretary-General pointed to the lack of an existing government in Somalia

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<sup>79</sup> Wheeler, *supra* note 1, p.174.

<sup>80</sup> Security Council Resolution 733, 23 January 1992, *available at*: <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/010/92/IMG/NR001092.pdf?OpenElement>

<sup>81</sup> Bryden, *supra*, note 5, pp.147-148.

<sup>82</sup> Wheeler, *supra* note 1, p.177.

<sup>83</sup> J. Pliger, ‘The US Fraud in Africa: Operation Restore Hope is part of a new age imperialism’ *New Statesman and Society*, (1993) *quoted in* Wheeler, *supra* note 1, p.179.

<sup>84</sup> Wheeler, *supra* note 1, p.179.

<sup>85</sup> *Ibid.*, pp.178-182.

who could ask for assistance, and therefore a need for the UN to take the decision.<sup>86</sup> Nevertheless, the resolution makes 18 references to the “humanitarian” aspect which illustrates that the main reason for acting was humanitarian. The resolution then authorizes the use of force on the grounds that the humanitarian crisis in Somalia is a threat to “international peace and security” creating a historic precedent for the development of humanitarian intervention. At the same time, the resolution recognizes “the unique character of the present situation in Somalia and mindful of its deteriorating, complex and extraordinary nature, requiring an immediate and exceptional response”.<sup>87</sup>

The resolution created the United Task Force (UNITAF) and the U.S. led Operation Restore Hope. Despite the signing of a ceasefire, the fighting continued, and the UN decided to extend its mandate. On 26 March 1993, the Security Council adopted Resolution 814, authorizing UN troops to act under Chapter VII in order to establish the rule of law, to create a secure environment in Somalia and to ensure compliance by all Somali parties.<sup>88</sup> To achieve this goal, the Secretary General agreed to deploy 20,000 peacekeepers in the establishment of UNOSOM II.<sup>89</sup>

UNOSOM II faced heavy opposition, especially from Aideed and the Somali National Alliance (SNA). On 3 October 1993 U.S. Rangers launched an attack against Aideed that killed over 500 Somalis. Eighteen U.S. Rangers were also killed in the firefight, and on television the world saw pictures of a dead American soldier being dragged through the streets of Mogadishu.<sup>90</sup> This led to strong criticism of the intervention, and President Clinton announced that all U.S forces would be withdrawn by 31 March 1994.<sup>91</sup> Without having restored the rule of law in Somalia, and having experienced casualties, the UN could not ensure further support for its ambitious mission. On 4

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<sup>86</sup> A. Roberts, 'Humanitarian War: Military Intervention and Human Rights' 69/3 *International Affairs* (1993) p.440.

<sup>87</sup> See note 2.

<sup>88</sup> See note 3.

<sup>89</sup> Wheeler *supra*, note 1, p.194.

<sup>90</sup> L. Glanville, 'Somalia Reconsidered: An Examination of the Norm of Humanitarian Intervention' *Journal of Humanitarian Assistance* (2005) p.11.

<sup>91</sup> See note 4.

November 1994, after failed peacekeeping efforts, the Security Council voted unanimously to withdraw all forces from Somalia.<sup>92</sup>

### 3.2 Was the intervention in Somalia a lawful humanitarian intervention?

The first question is whether or not the intervention in Somalia qualifies as a humanitarian intervention.

This thesis has established that a humanitarian intervention has to be conducted with aims of ending widespread deprivations of international recognized human rights of individuals other than its own citizens, without the consent from the state being intervened and involving the use of armed force by international organizations or states.

Resolutions 794 and 814 authorized the use of force, and were followed by a forceful intervention by the UN and the U.S. Hence, it is clear that the intervention in Somalia involved the use of force by a state and an international organization.

Furthermore, there must be widespread deprivations of international recognized human rights.

The International Covenant on Civil and Political Rights Article 6 says that every human being has the “inherent right to life”, and the Covenant on Economic, Social and Cultural Rights Article 11.2 recognizes the “fundamental right of everyone to be free from hunger”.<sup>93</sup> In 1992, Somalia was in a state of lawlessness, without a functioning government, and with a clan-based civil war that devastated the country. The warlords prevented aid from being distributed, and tens of thousands of people were dispossessed when the armies plundered villages.<sup>94</sup> Somalia was also heavily affected by a drought and famine which killed hundreds of thousands of people. The lack of food and the massive killings deprived the people of Somalia of, among other things, the “inherent

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<sup>92</sup> Security Council Resolution 954, 4 November 1994, *available at*:  
<http://daccessdds.un.org/doc/UNDOC/GEN/N94/431/95/PDF/N9443195.pdf?OpenElement>

<sup>93</sup> See note 58.

<sup>94</sup> Bryden, *supra* note 5, p.147.

right to life” and the right to “be free from hunger”. The situation in Somalia thus constituted widespread deprivations of international recognized human rights.

Thirdly, the intervention has to be conducted with the aim of ending violations of human rights of individuals other than its own citizens. This refers to the motive behind the intervention. Legal scholars acknowledge that the findings of other non-humanitarian motives do not disqualify the intervention as humanitarian as long as the intervention was conducted with aims of ending human rights violations.<sup>95</sup>

The question is therefore whether the U.S. and the UN intervened with aims of ending widespread deprivations of international recognized human rights of individuals other than its own citizens.

First, the thesis will address the U.S. motivations for intervening. Important factors seemed to be intense media-attention towards the humanitarian emergency in Somalia and the description of the situation in Somali refugees’ camps. Another important factor was that Somalia was considered a low-risk and short-term operation. At a National Security Council meeting in November, Acting Secretary of State said that “we could do this... at not too great a cost and, certainly, without any great danger of body bags coming home”.<sup>96</sup> Around this time, the Chairman of the Joint Chiefs also agreed to support a military intervention if the operation was limited to protecting the delivery of humanitarian aid in certain regions of Somalia, and if a UN peacekeeping force would take over shortly after Clinton became President.<sup>97</sup> These conditions illustrate another factor that impacted the decision to intervene; Bush was coming to an end of his Presidency and it is widely accepted that concern for his legacy was a contributing factor.<sup>98</sup> Another side of this is that the intervention in Somalia would likely deflect attention from Bush’s inaction over the atrocities committed in Bosnia.<sup>99</sup>

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<sup>95</sup> J. Davidovic, ‘Are Humanitarian Military Interventions Obligatory?’ 25:2 *Journal of Applied Philosophy* (2008) p.137; Wheeler, *supra* note 1, p.38.

<sup>96</sup> Quoted in Glanville, *supra* note 90, p.6.

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*, p.5.

All these factors had an impact on the Bush Administration's decision to intervene, but the diversity of factors does not necessarily rule out the humanitarian concerns as the primary motive. There seems to be no hidden power or political motives, and most scholars agree that the original U.S. purpose for intervening was motivated by humanitarian concerns.<sup>100</sup> Furthermore it is clear that the intervention was conducted to protect individuals other than its own citizens. The humanitarian concern for the people of Somalia was emphasized by Bush's statement when he addressed the nation after Resolution 794 was passed: "The people of Somalia, especially the children of Somalia, need our help. We're able to ease their suffering. We must help them live. We must give them hope. America must act".<sup>101</sup>

The conclusion is therefore that the U.S. intervened with aims of ending widespread deprivations of international recognized human rights of individuals other than its own citizens.

Secondly, the thesis will look at the UN motives for intervening in Somalia. It follows from the preamble of Resolution 794 that the reason for authorizing force was that "the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security".<sup>102</sup> Although the hunt for Aideed later contradicted the humanitarian purposes that led to the intervention, it is clear that the UN authorized the use of force for the purpose of ending human rights violations of the people of Somalia.

The question is if the lack of a government in Somalia, which could either consent or oppose the intervention, disqualifies the intervention as a humanitarian intervention.

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<sup>99</sup> Wheeler, *supra* note 1, p.181.

<sup>100</sup> Glanville, *supra* note 90, pp.4-9; Wheeler, *supra* note 1, p.201; James L. Woods, 'U.S. Government Decisionmaking Process During Operations in Somalia' in W. Clarke & J. Herbst *Learning from Somalia, The Lessons of Armed Humanitarian Intervention* (Westview Press, Boulder 1997) p.158.

<sup>101</sup> George Bush, 'Address to the Nation on the Situation in Somalia', 4 December 1992, *quoted in* Glanville, *supra* note 90, p.5.

<sup>102</sup> See note 2.

As mentioned above, an intervention is carried out without the consent of the state being intervened. If the state in question consents to the use of force one cannot label the use of force as an intervention. In regards to the adoption of Resolution 794, Secretary-General Boutros-Ghali wrote to the Security Council: “[a]t present no government exists in Somalia that could request and allow such use of force. It would therefore be necessary for the Security Council to make a determination under Article 39 of the Charter that a threat to the peace exists... and to decide what measures should be taken to maintain international peace and security”.<sup>103</sup> The Secretary-General here takes the stand that in the absence of a functioning government the Security Council must act instead. Although there was no possibility for a Somali government to consent to the use of force, one still has to relate to the fact that the intervention was conducted without consent. Thus, the lack of an existing government in Somalia does not disqualify the intervention as a humanitarian intervention.

The conclusion is that the intervention in Somalia qualifies as a humanitarian intervention.

The next question is whether the humanitarian intervention in Somalia was lawful.

The starting point is the UN Charter and its prohibition against the use of force. Article 2(4) together with the principles of sovereignty and non-interference in Articles 2(1) and 2(7) make forceful interventions in other states incompatible with the Charter. Chapter VII makes an exception to this in Article 42, which gives the Security Council the power to authorize the use of force in cases of “threat to the peace, breach of the peace, or act of aggression”.<sup>104</sup> Resolutions 794 and 814 were authorized by the Security Council, acting under Chapter VII on grounds that the situation in Somalia constituted a threat to international peace and security,<sup>105</sup> and is as such in compliance with Article 42.

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<sup>103</sup> *Quoted in Roberts, supra* note 86, p.440.

<sup>104</sup> UN Charter Article 39.

<sup>105</sup> See notes 2 and 3.

The question is therefore if the intervention in Somalia meets the criteria of necessity and proportionality.

In regards to the question of necessity, the first subject to be assessed is if the Security Council's decision to resort to force was necessary. As mentioned above, this means that the decision to use force has to be the last resort. Hence, one has to look at whether or not peaceful measures had been tried and if they were successful.

Even though the UN's first response to the conflict was to pull out its personnel during the fighting in 1990-1991, the UN later led several attempts to solve the conflict with peaceful measures.

On 3 March 1992, Undersecretary General Jonah negotiated a ceasefire between Mahdi and Aideed, and for a short while Mogadishu experienced a semblance of calm.<sup>106</sup> Unfortunately, the ceasefire was not complied with, and the fighting again escalated. The Secretary-General then sent his Special Representative Shanoun, who established good relations with the warlords and believed that Somalia's problems could be resolved through diplomacy.<sup>107</sup> He also made the faction leaders agree to the deployment of 500 peacekeepers. Shanoun was making progress with the faction leaders, and one might argue that if given more time he could have convinced them to allow a stronger peacekeeping force and thus avoid a forceful intervention. On the other hand, Shanoun's attempt to work with the Somali tradition of lengthy negotiations and consultations may not have been the appropriate strategy in a humanitarian crisis where thousands of people died every day.<sup>108</sup> The Deputy Chief of Mission at the U.S. Embassy in Mogadishu argued that although Shanoun was making progress, by mid-1992 diplomatic efforts to solve the conflict were already too late.<sup>109</sup> This implies that peaceful measures were no longer enough, and that at the time the decision to use force was made, there was a need for a stronger response. Bearing in mind the broad margin

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<sup>106</sup> Bryden, *supra* note 5, p.147.

<sup>107</sup> W. Clarke, 'Failed Visions and Uncertain Mandates in Somalia' in Clarke & Herbst, *supra* note 100, p.7.

<sup>108</sup> K. Mekhaus, 'International Peacebuilding and the Dynamics of Local and National Reconciliation in Somalia' in *Ibid* p.54.

of appreciation of the Security Council, the conclusion is that the decision to resort to force was necessary.

Secondly, the question is whether the means of force used during the intervention was necessary.

In order for the use of force during the intervention in Somalia to be considered necessary one has to look at the balance between demands of military necessity and considerations of humanity.<sup>110</sup>

In December 1992, the U.S. announced that it would send 28,000 troops to Somalia to safeguard humanitarian operations, and on 9 December the first troops arrived in Mogadishu.<sup>111</sup> President Bush's desire to have the UN take over as soon as possible ensured that Operation Restore Hope was restricted to the delivery of humanitarian aid. Although disarmament of the warlords and the restoration of the rule of law were crucial to helping the people of Somalia, this required a long-term commitment and a risk of losing soldiers' lives that was unacceptable to the U.S. administration.<sup>112</sup> This strategy meant that the probability of producing successful results diminished, but it also laid a constraint on the means of force used and implies that the force used was necessary.

The main controversy is the hunt for Aideed because it contradicted the humanitarian motives behind the intervention. The hunt for Aideed started when UN peacekeepers were killed by the SNA after an inspection of a SNA arms depot.<sup>113</sup> This led to the adoption of Security Council Resolution 837 that condemned the attacks and authorized "all necessary measures against all those responsible".<sup>114</sup> In the hunt for Aideed, U.S. air attacks against SNA forces killed over 100 Somalis, including women and

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<sup>109</sup> Clarke, *supra* note 107, p.8.

<sup>110</sup> Gardam, *supra* note 44, p.2.

<sup>111</sup> Bryden, *supra* note 5, p.148.

<sup>112</sup> Wheeler, *supra* note 1, p.190.

<sup>113</sup> *Ibid.*, p.194.

<sup>114</sup> Security Council Resolution 837, 6 June 1993, *available at*:

<http://daccessdds.un.org/doc/UNDOC/GEN/N93/332/32/IMG/N9333232.pdf?OpenElement>



children.<sup>115</sup> Furthermore, over 500 Somalis were killed on 3 October in an attack against a hotel. Air attacks against civilian locations and the loss of civilian lives are clearly not in correspondence with securing humanitarian relief operations and saving people from famine and diseases. This leads to the argument that there was not a balance between military necessity and considerations of humanity.

On the other hand, the means of force used during the intervention contributed to saving many lives that would otherwise have been lost,<sup>116</sup> and this strongly implies that the means of force used was necessary. Moreover, considerations of humanity also became apparent through the attempts made by UNOSOM II to address the underlying causes of the humanitarian crisis when given a mandate in Resolution 814 to rebuild the state.

Although some elements of the intervention involved unnecessary means, seen as a whole, one can conclude that the intervention had a balance between demands of military necessity and considerations of humanity, and thereby fulfills the criterion of necessity.

The next question is if the intervention meets the criterion of proportionality.

In regards to the Security Council's decision to authorize force, one has to bear in mind the Council's margin of appreciation when deciding what measures to take. Resolution 794 was passed with the aim of ensuring humanitarian relief to the Somali people and authorized the employment of UNITAF and Operation Restore Hope.<sup>117</sup> With regards to the humanitarian crisis in Somalia at that time, it seems clear that the decision to authorize troops was proportional to the aim of ensuring humanitarian relief. Resolution 814 was adopted with the aim of creating a secure environment for humanitarian relief in Somalia, and gave a broad mandate to UNOSOM II as the troops were authorized to assist in the reestablishment of the civil administration and police force, to establish the rule of law and to promote political reconciliation.<sup>118</sup> The wide

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<sup>115</sup> Wheeler, *supra* note 1, p.195.

<sup>116</sup> See note 7.

<sup>117</sup> See note 2.

<sup>118</sup> See note 3.

mandate given to UNOSOM II may indicate that the decision was not proportionate to the aim of ensuring safety for humanitarian relief. Still, as shown above, the situation in Somalia had not improved in any significant way during the prior attempts to establish a safe environment in the country. Instead, the situation deteriorated, and thus if the UN should have any realistic goals of improving the situation it would require a stronger commitment. As Chapter VII gives the UN a broad margin of appreciation to consider the proportionality of its decision, the conclusion is that the decision laid down in Resolution 814 was proportionate.

The next question is if the means of force used during the intervention in Somalia was proportionate.

This question requires an assessment of the excessiveness of the use of force in relation to the advantage anticipated.<sup>119</sup>

The main debate here relates to excessiveness of the use of force in the hunt for Aideed where the troops killed hundreds of civilians in various failed attempts. Such aggressive use of force without achieving any results implies that the use of force was not proportional. Even though they anticipated catching Aideed, one might still argue that the bombing of civilian locations was not proportionate. The troops arrived in Somalia to help the people affected by the humanitarian crisis, not to capture warlords. Seen in this context, the use of force seems disproportional.

On the other hand, the attempts to capture Aideed constituted only a small part of the intervention. The purpose of the intervention was to protect humanitarian relief operations, and in regards to this, the use of force did not seem too excessive. While the presence of some 20,000 soldiers and peacekeepers can be regarded as a massive use of force, it was merely enough to provide aid and restore order. This implies that the use of force was proportionate in relation to the advantage anticipated of saving civilian lives.

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<sup>119</sup> See note 45.

While one has to acknowledge that the use of force during the intervention caused civilian losses, it is undisputed that the intervention also saved many civilian lives.<sup>120</sup> A holistic evaluation of the intervention thereby leads to the conclusion that the means of force used during the intervention in Somalia was proportionate.

The humanitarian intervention in Somalia gained legality through its authorization by the Security Council and its use of force complied with the principles of necessity and proportionality. The conclusion is therefore that the intervention in Somalia was a lawful humanitarian intervention.

#### **4 What significance does the intervention have in regards to the legal status of humanitarian intervention and later interventions?**

##### **4.1 In regards to the legal status of humanitarian intervention**

The starting point for the discussion on the legal status of humanitarian intervention is the UN Charter. The intervention in Somalia did not contribute to any changes in the Charter, and thus the conflict between the principles of sovereignty and non-interference and the protection of human rights continues.

Nevertheless, the intervention in Somalia might have had an impact on the Security Council's practice under Chapter VII. The Council's decisions on when to intervene are important for the development of humanitarian intervention. The Council has the primary responsibility for the maintenance of international peace and security, and its decision for when to authorize an intervention has major significance for the legality and legitimacy of humanitarian interventions. An extensive practice of intervening for humanitarian purposes will contribute to the development of humanitarian intervention, while decisions to not intervene emphasize the importance of sovereignty and non-intervention.

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<sup>120</sup> See note 7.

The most important resolutions by the Security Council in Somalia are Resolutions 794 and 814.

As mentioned above, resolution 794 has its significance for the development of humanitarian intervention as the first time the Security Council authorized the use of force explicitly on humanitarian grounds without the consent of a government. This represents an important step for the UN in regards to acknowledging the magnitude of human rights and their significance in the international community. The resolution shows that the Council may authorize the use of force without consent from the intervened state when human rights are at stake, and can thus serve as an important precedent for future situations.

However, the fact that there was no existing government in Somalia that could either consent or object to the intervention may reduce the resolution's importance. This was emphasized by members who were concerned that this case would set a new precedent for humanitarian intervention. The resolution talks about the "unique", "extraordinary" and "exceptional" aspects of the Somalia case,<sup>121</sup> words that illustrated concerns that the resolution opened up for eroding the rules of non-intervention.<sup>122</sup> Resolution 794 did not mention Article 2(7) which reflects the view that the resolution did not breach the rules of non-intervention since the Somali government no longer existed. On the other side, the fact that there is no government does not mean that there is no state to intervene in. Additionally, the lack of a functioning government in Somalia is not mentioned in the resolution. The use of force is authorized because the "magnitude of the human tragedy caused by the conflict in Somalia...constitutes a threat to international peace and security". It is clear that the internal humanitarian crisis in Somalia calls for the use of force, and Resolution 794 is thereby a pioneer resolution in the history of the Security Council. Furthermore, it is only "unique" and "extraordinary" situations that call for an intervention, and recognizing the uniqueness of the situation in Somalia can therefore not take away the resolution's precedential importance.

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<sup>121</sup> See note 2.

<sup>122</sup> Wheeler, *supra* note 1, p.186.

Another aspect of Resolution 794 is that even though the resolution refers to the situation in Somalia as a “threat to international peace and security”, there are no explicit references to circumstances in Somalia that actually threaten international peace and security. This implies that the Security Council regards human rights abuses inside a state as threats to the peace in themselves.<sup>123</sup> This emphasizes the resolution’s importance for the Security Council’s practice on humanitarian intervention.

The resolution was authorized because of the suffering caused by the breakdown of civic authority, and not a state abusing its citizens. The lack of a functioning government thus puts the Somalia case in another category than interventions conducted on the basis of human rights abuses by the state. This might weaken the resolution’s precedence for the development of the doctrine of humanitarian intervention. Still, regardless of the background of the resolution it still has importance for the evolution of humanitarian intervention as it opened up for authorizing the use of force without consent in a humanitarian emergency.

The authorization of Resolution 814 is also significant for the Security Council’s practice of intervening.

The resolution notes the “continuing reports of widespread violations of international humanitarian law and the general absence of the rule of law in Somalia” and determines that “the situation in Somalia continues to threaten peace and security in the region”. In requesting the troops to assist in the “re-establishment of national and regional institutions” and “the re-establishment of Somali police...the restoration and maintenance of peace, stability and law and order”, this was the most ambitious mandate ever given to a UN mission. The resolution showed how far the Council was willing to interfere in a state’s internal affairs in order to rebuild the state and establish the rule of law. Resolution 814 also tried not only to ease the suffering in Somalia, but to address the root causes of the suffering, and Somalia thus represented the most obvious case where the UN took on new duties to build the world order.<sup>124</sup>

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<sup>123</sup> For support to this view see for instance I. Österdahl, ‘By All Means, Intervene!’ 66, *Nordic Journal of International Law* (1997) p.256.

<sup>124</sup> W. Clarke and J. Herbst, ‘Somalia and the Future of Humanitarian Intervention’ in Clarke & Herbst, *supra* note 100, p.250.

The resolution is significant for the legal status of the doctrine of humanitarian intervention because it illustrates that nation building can be a part of humanitarian intervention. The mandate given to UNOSOM II in this resolution can also illustrate the weight the Security Council places on its role as a promoter of human rights. On the other hand, UNOSOM II did not manage to fulfill its mission to rebuild Somalia, and when the troops left, Somalia did not have a functioning government. The failed mission might reduce the resolution's significance as it shows the difficulties with nation building as a part of humanitarian intervention.

The conclusion is that although their importance might be weakened by the special circumstances in Somalia and the lack of success in rebuilding the state, Resolutions 794 and 814 were historical for the doctrine of humanitarian intervention. The resolutions also had a significant contribution to the development of the Security Council's practice on humanitarian intervention.

In regards to international customary law, the thesis has shown that there was no prior right of humanitarian intervention in international customary law before the intervention in Somalia. The intervention in Somalia was authorized by the Security Council and can thereby not contribute to a new norm of unauthorized interventions. As for a norm of authorized interventions, the Council's powers are exclusively regulated by the UN Charter, and a norm of authorized interventions can thereby not develop as customary law.<sup>125</sup>

Nevertheless, the intervention in Somalia may contribute to the development of the legal status of humanitarian intervention if it gained legitimacy for the case of humanitarian intervention. Legitimacy can serve as a justification to act, based on a moral obligation, even if there is not a legal justification. The intervention in Somalia had a legal justification in the UN Charter, but it might also contribute to the

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<sup>125</sup> If customary law develops subsequent to a treaty and is not in conformity with the treaty, the treaty continues to govern the relations between the parties. Custom can only prevail if the customary rule is of *jus cogens*, see Dixon, *supra* note 11, pp.33-36. As mentioned above the right of humanitarian intervention is not a customary rule of *jus cogens*.

development of humanitarian intervention in general if the intervention gained such legitimacy.

The question is then if the intervention in Somalia contributed to increasing the legitimacy of humanitarian intervention.

Proponents of humanitarian intervention often highlight the fact that the intervention was undertaken in a country of little or no strategic or economic importance to the intervener.<sup>126</sup> In previous interventions, the intervener has often been accused of intervening to protect own interests instead of protecting human rights. Such accusations diminish the status of humanitarian intervention and have been an obstacle to its development.

The intervention can thereby contribute to the development of humanitarian intervention as the U.S. and the UN did not have any strategic or economic interests in Somalia. Nevertheless, this would be a stronger argument if they had responded earlier to the humanitarian crisis. There were arguments in the U.S. administration for actions at an earlier stage,<sup>127</sup> and an earlier response might have saved more lives. Moreover, there is nothing that indicates that the U.S. would have intervened if this would have weakened their interests, and as mentioned earlier there were other motives than purely humanitarians that were decisive for the intervention.

Most of the criticism towards the U.S. intervention is based on the fact that when they experienced a low number of casualties the administration decided to withdraw. The intervention in Somalia probably saved hundreds of thousands of lives, but after only 36 casualties Clinton decided to pull the troops out.<sup>128</sup> This can illustrate that when no strategic or economic interests is at stake the commitment to humanitarian norms may

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<sup>126</sup> M. Finnemore, 'Constructing Norms of Humanitarian Intervention', *quoted in* Glanville, *supra* note 90, p.7.

<sup>127</sup> Wheeler, *supra* note 1, pp.201-202.

<sup>128</sup> S.A. Garrett, 'Doing Good and Doing Well: An Examination of Humanitarian Intervention' in Glanville, *supra* note 90, p.13.

be undermined by using means that prioritize to avoid casualties. This led to strategies that minimized American casualties but cost more civilian lives.<sup>129</sup>

In general, these circumstances may reduce the interventions legitimacy. The fact that the U.S. and the UN intervened in a state where they had no interests can serve as a positive impact on the doctrine, but then again this is reduced by their reluctance to accept the necessary risks. Seen as a whole, the intervention therefore mainly has its importance for the legality and legitimacy of humanitarian intervention as being authorized by the Security Council.

#### 4.2 In regards to later interventions

The doctrine of humanitarian intervention develops not only through treaty law, but also through the practice of intervening during human rights abuses and humanitarian crisis. Even though the intervention in Somalia did not change treaty law or customary law, it might have had an impact on the doctrine as contributing to a practice of intervening. This can again lead to changes in international law.

This part of the thesis will discuss whether the intervention in Somalia has had any significance for the doctrine of humanitarian intervention as contributing to a practice of intervening. The most obvious case in relations to this is the genocide in Rwanda in 1994, which occurred shortly after the intervention in Somalia. This was a case of humanitarian crisis, such as Somalia, to which the international community responded differently. While the UN took action in Somalia, the genocide in Rwanda is remembered as an example of inaction from the outside world. The question here is if the intervention in Somalia had any impact on the international response to this crisis.

When genocide broke out in Rwanda in early 1994 the UN was still preoccupied with the operations in Somalia. The political climate in the UN was thus not optimal for another involvement in a difficult ethnic conflict. Especially the U.S. opposed any involvement in Rwanda. Two days before the Security Council discussed to send a

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<sup>129</sup> Glanville, *supra* note 90, p.14.



peacekeeping force to Rwanda, 18 U.S. Rangers were killed in the October 3 firefight in Somalia. This led to a powerful resistance in the U.S. against participation and support for UN operations.<sup>130</sup>

When the Council met on 20 April 1994 to discuss UNAMIR's future, Somalia was on the table. The British Ambassador opposed intervention and reminded the UN to "think back to Somalia and about what you would ask these troops to do".<sup>131</sup> The Security Council agreed unanimously the next day to reduce UNAMIR to a troop of 270.<sup>132</sup> Furthermore, the general view in the UN seemed to be that no one wanted another involvement like Somalia at this time. In a BBC interview a senior advisor in the UN Department of Peacekeeping Operations (DPKO), stated that the DPKO's view was "not Somalia again".<sup>133</sup>

These circumstances lead to the conclusion that the intervention in Somalia was highly decisive for the decision not to intervene in the genocide in Rwanda.

The UN finally responded to the crisis when France offered to lead a multinational force and intervene in Rwanda. The French Prime Minister stated that France would not lead such an intervention if not given an explicit Security Council authorization,<sup>134</sup> and in Resolution 929 the Council gave authorization to use "all necessary means".<sup>135</sup> The intervention, named Operation Turquoise, soon became criticized as coming too late and not employing the right means.<sup>136</sup>

The question is thus why the intervention in Somalia had such an impact on the international response to the genocide in Rwanda.

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<sup>130</sup> Wheeler, *supra* note 1, p.217.

<sup>131</sup> Quoted in Wheeler, *supra* note 1, p.221.

<sup>132</sup> See note 25.

<sup>133</sup> Quoted in 'When Good Men do Nothing', BBC Panorama Program, 7 December 1998, cited in Wheeler, *supra* note 1, p.216.

<sup>134</sup> Wheeler, *supra* note 1, p.231.

<sup>135</sup> Security Council Resolution 929, 22 June 1994, available at:

<http://daccessdds.un.org/doc/UNDOC/GEN/N94/260/27/PDF/N9426027.pdf?OpenElement>

<sup>136</sup> See for instance Wheeler, *supra* note 1, pp.231-237; Tesón, *supra* note 49, pp.317-322.

The lack of timely interference in Rwanda illustrates the magnitude of the principles of sovereignty and non-intervention and the lack of protection of human rights. The intervention in Somalia might have had an impact on the weighting of these principles.

Firstly, the intervention in Somalia led to reluctance to accept casualties in order to protect human rights. Especially for American decision makers, this stood in the way of intervention. It has been claimed that the loss of soldiers in Somalia shocked the American public in a way that the Administration had to rethink its foreign policies.<sup>137</sup> It seemed that the consequences of the intervention in Somalia led to a balancing of principles where the protection of human rights was no longer as important.

Secondly, the intervention in Somalia started out with high expectations, and the failure to reach these might have had significance in the decision not to intervene in Rwanda. Early efforts to provide humanitarian relief in Somalia went well, and thus the mission may have gotten unrealistic expectations and looked misleadingly easy. When the troops then experienced casualties, this led to a perception of defeat.<sup>138</sup> This might have led to an opposition against interference in Rwanda. One can also argue that the loss of casualties and the unsuccessful attempts of restoring the rule of law in Somalia overshadowed the positive humanitarian outcomes. In this political climate, it was difficult to achieve support for another intervention.

Thus, it seems like the international community in the aftermath of Somalia did not view human rights important enough to triumph the principles of sovereignty and non-intervention.

In regards to Operation Turquoise, one can see similarities to, and influences from, the intervention in Somalia in the Security Council.

In both instances, the Security Council authorized states to lead multinational forces after proposals from the U.S. and France. This shows that the Council views states as

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<sup>137</sup> A. Destexhe, 'The Third Genocide', 97, *Foreign Policy* (1994-1995) p.10.

<sup>138</sup> D. Johnson and D. Tierney, 'The Wars of Perception', *The New York Times*, 28 November 2006.

competent and appropriate to conduct interventions. Furthermore, when authorizing Operation Turquoise the Council explicitly stressed that the operation should be “impartial and neutral”.<sup>139</sup> Accusations of impartiality from Aideed caused severe problems during the intervention in Somalia,<sup>140</sup> and this might be a reason why the Council stressed the importance of this when authorizing an intervention in Rwanda. The two situations also illustrate how the Council’s practice in cases of humanitarian interventions is influenced by the political climate. While the Council put human rights above sovereignty and non-intervention in Somalia, it did the opposite in Rwanda. Even when Resolution 929 finally was authorized, five countries abstained.<sup>141</sup> The political climate in the Council was not open for another intervention, and this resulted in the choice of sovereignty and non-intervention above the protection of human rights.

This leads to the conclusion that the intervention in Somalia played a major role in the decision not to intervene timely in Rwanda. Especially the loss of soldiers in Somalia, and the sense of failure in restoring the society were important factors that led to inaction in Rwanda. In regards to contributing to a practice of intervening, the intervention in Somalia influenced the Security Council when authorizing Resolution 929. However, the lack of timely action significantly weakened the intervention in Somalia as a contribution to a practice of intervening in the case of Rwanda.

## **5 De lege ferenda; Humanitarian interventions in the future**

In many parts of the world people suffer from conflicts and are deprived of their fundamental human rights. This part of the thesis will explore whether or not humanitarian intervention could be a suitable solution to such situations based on the lessons learned from Somalia.

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<sup>139</sup> See note 135.

<sup>140</sup> J. Drysdale, ‘Foreign Military Intervention in Somalia: The Root Cause of the Shift from Un Peacekeeping to Peacemaking and Its Consequences’ in Clarke & Herbst, *supra* note 100, pp.120-122.

First and foremost, the intervention in Somalia became possible because of Security Council authorization and illustrates the importance of the role of the Security Council for humanitarian intervention. In future situations where an intervention presents an alternative; authorization by the Security Council should be the obvious option. However, a decision by the Council is not only a legal decision, but rests heavily on political choices. This might be an obstacle to authorizing a humanitarian intervention. This is illustrated by the situation in the region of Darfur in Sudan, where over 300,000 people have been killed and 2,5 million people have fled their homes.<sup>142</sup> The crisis, which the U.S. has labeled genocide, is an ethnic-based conflict where the government is supporting the militia.<sup>143</sup> The Security Council has been criticized for inaction which is often caused by China, the main foreign investor in Sudan's oil industry, blocking action towards the Sudan government.<sup>144</sup> Even though the Council has authorized a peacekeeping mission in Darfur,<sup>145</sup> the political situation in the Security Council is an obstacle to more decisive action. If the Security Council shall be able to authorize a humanitarian intervention in situations such as Darfur, there needs to be an agreement in the Council to prioritize human rights above political and economic considerations.

Secondly, the intervention in Somalia illustrates the importance of acknowledging the complexity of the conflict. If deciding to intervene, there need to be an understanding that a humanitarian intervention often demands a long-term commitment. Learning from Somalia, one cannot overlook the underlying reasons of the conflict. For example, Sudan has been in a state of war almost continuously since the country gained its independence, and ethnic divisions, religious differences, and economic inequality have caused frictions between the tribes.<sup>146</sup> All these factors make a humanitarian intervention complex and difficult. Inevitably, this leads to a comprehensive and long-

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<sup>141</sup> Wheeler, *supra* note 1, p.232.

<sup>142</sup> Save Darfur, 'Darfur Update' 6 June 2008, p.1, available at: <http://www.savedarfur.org/pages/background/>

<sup>143</sup> Human Rights Watch, 'Darfur in Flames' 16:5, (2004) pp.6-12.

<sup>144</sup> R. Cohen, 'No Quick Fix for Darfur' *Northwestern Journal of International Affairs* (2006), p.2.

<sup>145</sup> Security Council Resolution 1769, 31 July 2007, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N07/445/52/PDF/N0744552.pdf?OpenElement>

<sup>146</sup> H. Akturk, 'Humanitarian Intervention in Darfur: A Viable Option?' *The Journal of Turkish Weekly*, available at: <http://www.turkishweekly.net/op-ed/2419/humanitarian-intervention-in-darfur-a-viable-option.html>

term commitment from the international community, which again makes political support for an intervention more unlikely.

The experiences from the intervention in Somalia make it clear that an intervention should be authorized by the Security Council and needs to address all aspects of the conflict. If the international community can agree upon such an intervention, it should have good prospects of succeeding.

Furthermore, future humanitarian interventions may gain from a change in the legal status of humanitarian intervention, for instance by the R2P. If the R2P develops into a legal framework, it may establish criteria for humanitarian intervention and create a legal obligation to react to humanitarian emergencies. In this regards, the intervention in Somalia has had significance as the R2P threshold was elaborated on the experiences from Somalia and other humanitarian crises during the 1990s.<sup>147</sup> However, even though the Security Council has made references to the R2P in several resolutions,<sup>148</sup> the present formulation of the R2P is not legally binding and merely serves as a political and moral statement. Still, the development of the R2P illustrates that it may be possible to create a legal framework on humanitarian intervention in the future.

## 6 Conclusion

This thesis illustrates how humanitarian intervention is a struggle between fundamental principles of non-intervention, sovereignty, the prohibition of the use of force and the protection of human rights. All these principles have their foundation in the UN Charter, and the intervention in Somalia is a result of the Security Council's weighting of these principles. Especially the adoption of Resolution 794 had tremendous importance for

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<sup>147</sup> D. Amnéus, 'Responsibility to Protect by Military Means – Emerging Norms on Humanitarian Intervention?' *Doctoral Thesis, Stockholm University* (2008), p.357.

<sup>148</sup> *Ibid.*, pp.209-213.

the Security Council's practice of intervening, as it authorized the use of force explicitly on humanitarian grounds without the consent of a government.

The humanitarian intervention in Somalia did not result in a change in the UN Charter, but it contributed to the discussion on humanitarian intervention. All changes in the law are built on discussions, thus the intervention in Somalia is important for the development of the doctrine of humanitarian intervention.

The intervention in Somalia further illustrates advantages and disadvantages of humanitarian intervention. For example the intervention saved many lives and contributed to ending a humanitarian catastrophe, but it also cost lives, both civilian and those of the troops. It also revealed how difficult it is to intervene with aims of restoring a state. These will be valuable lessons both for future interventions and for the debate on humanitarian intervention. Learning from Somalia, it is important to remember that the use of force shall always be the last resort, and that humanitarian intervention is not a short-cut to peace. However, with this in mind, humanitarian intervention can be a legal and legitimate way of ending human rights abuses.

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