M42Law

International Law in the Contemporary World Arena

4000 - word Essay

Title: **Does international law recognise a right of humanitarian intervention in cases of overwhelming humanitarian necessity?**

Submission deadline: 17th January 2005

"The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others…".

(Philosopher John Stuart Mill)
(1806-1873)

Introduction

The dilemma of what to do about citizens of another sovereign country who see themselves confronted with horrifying abuses by their own government has remained with us throughout the era post World War II. The recent events in the Sudanese region of Darfur, labelled not only civil war, but "ethnic cleansing"[1] have, again, triggered discussions about the question of "humanitarian intervention"[2]. We can quote various instances in recent history after 1945, where appalling violations of basic human rights, including the mass killing of civilians on a high scale happened within the sovereign territory of a country, for example in Cambodia in the period 1975-1979, in Ex-Yugoslavia in the early 1990s, in Rwanda in 1994, to name but these.[3] Time and again, alongside those tragic events, different voices have called for military actions driven by humanitarian considerations, seemingly subscribing to the catchphrase "humanitarian intervention [as opposed to] inhumanitarian non-intervention"[4].

The military actions of NATO in Kosovo[5] especially, having been branded the first "humanitarian war",[6] have attained a remarkable degree of attention in the

---

[1] See, inter alia, Human Rights Watch Homepage: http://www.hrw.org/campaigns/darfur/index.htm

[2] For the purpose of this essay, for (the doctrine of) humanitarian intervention, we wish to refer to what Dixon describes as *"one State (State A) may use force in the territory of another state (State B) in order to protect the human rights of individuals in State B, usually being nationals of State B, implemented without the consent of the territorial sovereign*"; see: Dixon, M., 2000: Textbook on International Law, (Oxford University Press, 4th ed.), page 310. Wheeler and Bellamy put it, shortly, this way: *"Humanitarian intervention is an act that seeks to intervene to stop a government murdering its own people"*, see: Wheeler, N.J., Bellamy, A.J., "Humanitarian intervention and world politics", in The Globalization of World Politics, Baylis, John and Smith, Steve (Oxford University Press, 2nd edition 2001), p.472. For a terminological distinction between *humanitarian intervention* and *humanitarian assistance*, see Sarooshi, "Humanitarian Intervention and International Humanitarian Assistance: Law and Practice", Wilton Park Paper 86, the UK, November 1993, p.1. Furthermore, remarks on the notions of *forcible* and *non-forcible* interventions, that may occur in a unilateral or multilateral manner, can be found here. (A recent and vital example is the worldwide *humanitarian assistance* in the Asian region struck by the so-called *Tsunami-disaster* end of December 2004. Since this event, a large number of both government as well as NGO-resources have been mobilized in order to assist the victims; for UNHCR briefing notes on the UN-activities, see: http://www.unhcr.ch/cgi-bin/texis/vtx/tsunami?page=briefing). For different theories of humanitarian intervention see: Wheeler, , N.,J. Saving Strangers – Humanitarian Intervention in International Society, Oxford University Press, 2000, Part One; for yet another understanding of humanitarian understanding, see: Moeller, B.: "UN Military Demands and Non-Offensive Defence Collective Security, Humanitarian Intervention and Peace Support Operations", Working paper of the Copenhagen Peace Research Institute, University of Queensland, Brisbane, Australia, July 1996.

[3] Compare the remark by: Wheeler, pp.15, 16.

[4] Chesterman, S.: Just war or just peace ? – Humanitarian Intervention and International Law, Oxford University Press, 2001, see title of chapter 6, p.219.

[5] If the ICJ will find a ground for jurisdiction in Yugoslavia's action against the NATO countries, there will exist an opportunity for an authoritative judicial analysis of the existing international law relevant for the doctrine of humanitarian intervention. A neat overview on the armed conflict in what the author calls the notorious "powder keg" Kosovo, including thought-provoking remarks on the issue of "humanitarian intervention", is given by: Hadzic, M.: "Security Ranges Of NATO intervention in Kosovo", Working paper published by the Copenhagen Peace Research Institute, September 1999; Also compare the thorough review by: Guicherd, C.: "International Law and the War in Kosovo", Survival, (International Institute for Strategic Studies), Vol. 41, No.2, Summer 1999, pp.19-34.

[6] Macrae, J.: "Humanitarian aid and intervention: The challenges of integration – Understanding integration from Rwanda to Iraq", Ethics and International Affairs, Issue 18, no. 2 (2004); p.30.

academia, raising new and old questions about the legitimacy and viability of the model of humanitarian intervention.[7] While there seems to be an unanimous agreement that there are in existence both moral[8] and ethical[9] raisons d'être as well as some agreement of how the modus operandi of a humanitarian intervention should look like[10], there exists some substantial disagreement as to if at all and under which conditions such a venture is to be deemed legally permissible.

In the face of an absence of a comprehensive legalistic framework under international law that would govern humanitarian interventions (the human rights framework is severely limited by the weaknesses of its enforcement mechanisms), the essence of the contemporary debate predominantly stems from a clash of imperatives between the principles of the protection of state sovereignty as laid down in Art. 2 (4) and (7) of the UN-Charter and the obligation of the protection of human rights (that might be achieved through a humanitarian intervention),[11] in other words, a "conflict between justice and [legal] order".[12]

---

[7] As Hilpold has pointed out, the NATO military actions in Kosovo have by many authors been regarded as a watershed dividing a former *Hegelian, state-centred system of international relations*, from an *actual Kantian model* which is far more community-oriented; see the thorough and extensive legal review: Hilpold, p. 437; also compare remarks provided by Shaw, M.,N.: International Law, Cambridge University Press, Fifth Edition, 2003, pp.1046, 1047; furthermore, consider the interesting remarks provided by Ramsbotham, O., Woodhouse, T.: Humanitarian Intervention in Contemporary Conflict, Polity Press, Cambridge, 1996, chapter 6. pp.167-192.

[8] This position might be challenged, for instance, by Bhikhu Parekh, who has claimed: *"Citizens are the exclusive responsibility of their state, and their state is entirely their own business. (…)";* quotation taken from: Wheeler and Bellamy, p.473.

[9] For an interesting overview on ethical issues regarding the concept of humanitarian intervention, see: Smith, M.J., "Humanitarian Intervention: An Overview of the Ethical Issues", Ethics and International Affairs – Annual Journal of the Carnegie Council on Ethics and International Affairs, Volume 12, 1998; also compare: Bellamy, A.J.: "Ethics and Intervention: The "Humanitarian Exception" and the Problem of Abuse in the Case of Iraq", Journal of Peace Research, Volume 41, Number 21, March 2004.

[10] One would agree, for instance, that such actions would have to be in line with the four Geneva Conventions from 1949 and the two Additional Protocols from 1979 as well as other international humanitarian law. For a discussion of recent issues in this field, see, for instance: Human Rights Defenders on the Frontlines of Freedom - Protecting Human Rights in the Context of the War on Terror, Conference Report (November 11-12, 2003), May 2004, Carter Center, Atlanta, USA. For remarks on the quality of humanitarian law as lex specialis to other law in armed conflicts (and thus, also to humanitarian intervention), see: Watkin, K.: "Controlling the use of force: A role for human rights norms in contemporary armed conflict", American Journal of International Law, Vol. 98:1, p.1-35; also compare the position held by the famous ICRC regarding the concept of humanitarian intervention an the involvement of humanitarian law: Ryniker, A.: "The ICRC's position on "humanitarian intervention"", IRRC, June, 2001, Vol. 83, Nr.842, pp.527-532.

[11] Kap asks, whether, quite generally, any military intervention reasonably can be called humanitarian, when he states*: "Does it make sense to call an intervention 'humanitarian' when the troops involved may have to fight and kill those who, for whatever reasons, seek to obstruct them?";* see Kap, October 2000, Vol. 24, No.7. For a more generally written outlook on (the purposes of) humanitarian intervention and changing beliefs surrounding it can be traced at: Finnemore, M., reviewed by Cardenas, S., "The Purpose of Intervention: Changing Beliefs about the Use of Force", Ethics & International Affairs Annual Journal of the Carnegie Council on Ethics and International Affairs, Volume 18, No. 1 (Winter 2004).

[12] Wheeler, p.11.

Are self-defence and Security Council-authorized enforcement under Chapter VII the only legitimate exceptions to the UN Charter's prohibition on the use of force, or is there an independent right of humanitarian intervention based on (emerging) state practice, i.e. international customary law? Only a minority among international lawyers have adopted the view that humanitarian intervention is lawful.

This short paper seeks to briefly examine these and other relevant aspects that revolve around the concept of humanitarian intervention.[13] It comes with no surprise that both advocates and antagonists of the concept of humanitarian intervention advance legal (and other) arguments which involve a variety of teleological interpretations *de lege lata* as well as considerations *de lege feranda.*

Bearing in mind our question, we will try to approach the subject from two different angles. First, we will attempt to analyse relevant articles of the United Nations Charter (UN-Charter) and some of the arguments that have been put forth by different authors regarding this realm of international law. Secondly, we will consider the rules of international customary law in this field as well as the arguments being attached to it by international lawyers.

The paper foresees the conclusion that a customary rule establishing a right of (forcible) humanitarian intervention has not yet been able to arise from state practise any further than being an "*embryo of a rule of humanitarian intervention*"[14], the fact that thought-provoking tendencies can be observed in the international political arena notwithstanding.[15] While wishing to allow the reader to explore some evidence that we have gathered, we will leave other detailed conclusions for a later analysis.

[13] Already for reasons of space, our investigation of arguments will by necessity remain selective.
[14] For this notion as well as a neat overview on contemporary literature, see: Zacklin, R. "Beyond Kosovo", in Ku, C., and Diehl, P.,F. (ed.), International law – Classic and contemporary readings, Boulder, London, 2003, pp.375, 376.
[15] This position might, in international relations terminology, be called "*restrictionist*", or "*rule-consequentialist*" as opposed to what "*counter-restrictionist*" views would offer; for this terminology, see: Wheeler and Bellamy, pp.472 and 474.

The Analysis of the subject matter

Before engaging in the concrete analysis, we shortly, but importantly wish to point out that, as Dixon and McCorquodale have indeed rightly pointed out, the theoretical debate about the lawfulness of humanitarian intervention is not simply for (legal) academics. Our view of humanitarian intervention reveals much about the prevailing "Zeitgeist", the way we think of international law very generally – a fact which our analysis will have to take into consideration.[16]

Professor Greenwood has morally and convincingly argued that, an interpretation of international law which would forbid an intervention with the intention to prevent something as terrible as the Holocaust of the German "Dritte Reich", would be "contrary to the very principles on which modern international law is based".[17] Essentially, it seems, in the post-Cold War paradigm of comprehensive and inclusive security, the threat agenda (in the sense of Chapter VII UN-Charter) is now perceived to increasingly encompass human rights values, social injustices, economic deprivation et alia to "impart to the international security order with a more humanistic orientation".[18]

We herewith further seek to analyse whether this assumption can be traced in the existing international *corpus legis*. Extrapolating from Dixon, who has stated: "Should it be true that a right of humanitarian intervention is in the making, we must remember that for the international lawyer who believes in a theory of the „sources" of international law, such a right can exist only if it is based in treaty or found in state practice supported by adequate *opinio juris*. There is no moralistic magic that can manufacture the right simply because it ought to exist."[19]

---

[16] The legal "*classicists*" on the one hand view the formation of international law as stemming from the practice of States. Ipso facto, the absence of examples of intervention for the defence of basic human rights, or the (claimed) absence of acceptance of the legitimacy of such venture in those cases where humanitarian concern has been part of the motive for action, is all they need to prove that such acting is not in line with (contemporary) international law. So called "*realists*", on the other hand, perceive law as an instrument for the achievement of community goals and reason that the right of humanitarian intervention need not be established by such very strict criteria. It is enough, in their view, if the right is necessary and not specifically prohibited by the law. While classicist appear to be willing to sacrifice human suffering in favour of upholding the formal legitimacy of the law-creating process (although they would disagree with this criticism), realists make a case in favour of the use of military force to achieve certain "values". Compare the suggestions made in their notes, Dixon, M., McCorquodale, R.,2003: Cases and Materials on International Law, (Oxford University Pres, 4th ed. Oxford, New York (i.a.), p.556; equally compare the indications made by: Wheeler, p.11.

[17] Greenwood as quoted in the UK Parliamentary Select Committee on Foreign Affairs, Fourth Report, (2000), as quoted in Dixon, McCorquodale, p.555.

[18] Kap, October 2000, Vol. 24, No.7.

[19] Dixon, p. 310.

I.) Analysis of relevant articles of the UN-Charter

Humanitarian intervention is, in fact, not being expressly condemned by the UN-Charter, which sets the actual standard for the use of force between its member states.[20] However, for our purposes, we have to take into account its Article 2 (4) (which reflects the so-called "doctrine of non-use of force"), which affirms that:

> *"All Members [member states] shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, (…)."*[21]

In form of enumerative exceptions, there are only two cases under the Charter-law in which the use (or threat) of force may be allowed in the international relations between member-states – and it is highly questionable whether there are arguments that can persuasively make a case for the concept of humanitarian intervention finding a place in these.

Firstly, there is the right of self-defence, mentioned in Article 51 UN-Charta, which states that every member state of the UN is imbued with *"(…) the inherent right of individual or collective self-defence if an armed attack occurs (…)."* Secondly there is the possibility of legal military action on grounds of chapter VII of the UN-Charta, which reiterates in its Art. 43 that *"(…) the Security Council (…) may take such action [by virtue of a Security Council Resolution] by air, sea, or land forces as may be necessary to maintain or restore international peace and security. (…)."* Yet, a (classical) humanitarian intervention is neither a case of self-defence, nor of a measure based on chapter VII of the UN Charta. We will explain this briefly.[22]

A claim of humanitarian intervention based on self-defence could legally emerge only after the country forcibly defending itself has witnessed a violation of legal rights and therefore could only be advanced in respect of nationals after these were being harmed. But this is not the case when we look at the classical case of a humanitarian intervention of a state that aims to purely protect the human rights of the citizens of the state that is being attacked.[23]

---

[20] It also had not been condemned by either the League Covenant or the Kellogg-Briand Pact. For remarks on the latter legal document, see: Dinstein, Y.: War, Aggression and Self-defence, Cambridge: Cambridge University Press, 3rd edition, 2001, p.78.

[21] This primary obligation of all member states of the UN has attained the status of *ius cogens*, compare Dixon p. 293.

[22] As we shall see later, none of the historic cases since World War II, where military actions have been (allegedly) driven by humanitarian grounds genuinely fulfilled the conditions set out by the UN-Charter.

[23] Compare the remarks uttered by Judge Rosalyn Higgins, as quoted in: Dixon, McCorquodale, p.551.

The second exception to the rule of Art. 2 (4) UN-Charter, collective coercive military measures based on chapter seven, are also not being referred to in the case of a classical humanitarian intervention. The essential trait here is that no (express) consent of the Security Council (based on Art. 39 UN-Charter in connection with Art. 42 UN-Charter) covers the actions carried out in the name of a humanitarian intervention. In most cases, the violation of human rights of nationals will normally not constitute a threat or breach of international peace and security in the sense of chapter VII of the UN-Charter and the military actions are being driven unilaterally by one state or a group of states willing to act.[24]

To be quite clear, what is illegal unilaterally may be legally permissible if it is the result of a collective decision of the Security Council. A coercive humanitarian intervention is not excluded by the Charter per se and a priori, provided that the Security Council determines that massive and systematic violations of human rights occurring within a state constitute a threat to the peace and security, and then authorises an enforcement measure under chapter VII UN-Charter.[25]

In sum, we can say that the treaty-based international law does not incorporate a right to humanitarian intervention.[26] However, since international law is not confined to treaty texts, our next chance to see the rising of a right to humanitarian intervention will be the examination of the existing or emerging international customary law, a question to which we will now turn.[27]

[24] So-called "*unilateral actions*" are taken by an unauthorized participant who contends they are, nonetheless, lawful; for a thorough discussion of this term in connection to the concept of humanitarian intervention, see: Reisman, M.W.: "Unilateral Action and the Transformations of the World Constitutive Process: The Special Problem of Humanitarian Intervention", EJIL, 2000, Vol. 11 Nr.1, pp.3-18.

[25] For further details on the legal background of humanitarian intervention in the face of UN-law, see (for instance): Quadraat, de Jonge, C.: "Intervention in Internal Conflicts: Legal and Political Conundrums", Working Papers Carnegie Endowment for International Peace, Global Policy Program, Number 15, August 2000, pp.4 and following; equally consider: Chesterman, chapter 2.

[26] In fact, some of the most interesting legal arguments that we will be discussing under II). might have also been discussed in this earlier section, I). However, we see them being more aptly used in the discussion/analysis of the contemporary customary law. (Chesterman, for instance, in his chapter 2, has chosen a different structure of his analysis). For reviews of the UN Charter, see: Simma, B.: The Charter of the UN: A Commentary, (Oxford: Oxford University Press, 1995).

[27] For a general thorough legal review of the Exceptions to the prohibition of the use of inter-State force, see: Dinstein, Y.: War, Aggression and Self-defence, Cambridge: Cambridge University Press, 3rd edition, 2001, Part III, p.157-273.

II.) Analysis of contemporary rules of customary international law

Different authors in the academia have claimed that a right of humanitarian intervention either exists already as a rule of customary law or is at least a recently emerging norm. We will now attempt to analyse, with different references to the contemporary political world arena, whether this assumption can hold after a closer legal scrutiny.

Law is not static but develops through a process of State practice, of actions and the reaction to those actions. Brownlie has arrayed the elements of customary law (as referred to in Article 38 of the Statute of the ICJ) as a practice among states that shows duration, uniformity, consistency, as well as generality. Furthermore, the states have to obey to the practice with the required "*opinio juris et necessitates*", the recognition by the states of a certain practise as obligatory.[28]

It is questionable whether all these requirements are genuinely being met by the majority of states regarding humanitarian intervention. Certainly, since 1945, state usus has seen a growing importance attached to the safeguarding of human rights. There are several instances (where the threat to human rights has been of an extreme character) in which states have been prepared to ascertain a right of humanitarian intervention as a matter of last resort. Two instances are particularly important, and are usually being referred to by the advocates of the concept of humanitarian intervention, in an attempt to show evidence for both state practice and opinio juris. However, as we shall see, their perception of these cases in point is not a persuasive one.

First, in the summer of 1990 the Economic Community of West African States (ECOWAS) intervened in Liberia in an attempt to put a stop to the occurring civil war (thereby putting an end to appalling violations of human rights occurring there). That action was not mandated by the UN Security Council, but more than two years later the Council formally gave support to it and more generally, the ECOWAS action met with little or no international opposition.[29] In reality, however, the operations (by ECOMOG) were a regional peacekeeping exercise which, according to contemporary observers, was not recognised as a form of humanitarian intervention. The practical basis of the action was the need to restore order in a state without an effective Government.[30]

---

[28] Compare Brownlie, I., Principles of public international Law, 6th ed., Oxford University Press, 2003, pp.6-8.

[29] C.Greenwood, "International Law and the NATO Intervention in Kosovo Memorandum submitted to the Foreign Affairs Committee of the House of Commons", as quoted in: Dixon, McCorquodale, pp.552,553.

[30] Brownlie, op. cit., p. 712.

Secondly, in April 1991, the United Kingdom, United States of America and a number of other States intervened in northern Iraq to create "safe havens" to enable the large numbers of refugees and displaced persons to return home in safety. While the Security Council had earlier condemned the Iraqi repression of the civilian population as a threat to international peace and security in SCR 688 (1991), that resolution was not legally binding and did not authorise military action.[31] It is true that these actions received widespread international support. Moreover, with the exception of Iraq, very few States challenged the assertion of a right of humanitarian intervention in this case."[32] However, the statement of the Security Council was more connected to the "massive flow of refugees towards and across international frontiers" and to the "cross border incursions" than to the humanitarian crisis itself, as rightly highlighted by Hilpold. It can therefore not convincingly support the claim of being an example of a humanitarian intervention in the practice of states.[33]

[31] Compare remarks by Shaw, p.1046.

[32] C.Greenwood, "International Law and the NATO Intervention in Kosovo Memorandum submitted to the Foreign Affairs Committee of the House of Commons", as quoted in: Dixon, McCorquodale, pp.552,553; It is indeed neither within the scope or the purpose of this short paper to discuss all the instances in the recent history. However, we shortly wish to point out that references to humanitarian intervention first began to appear in the international legal literature after 1840. Two interventions in particular were most directly responsible: the intervention in Greece by England, France, and Russia in 1827 to stop Turkish massacres and suppression of populations associated with insurgents; and the intervention by France in Syria in 1860 to protect Maronite Christians. In fact, there were at least five prominent interventions undertaken by European powers against the Ottoman Empire from 1827 to 1908; for more details, see: Abiew, Francis Kofi: The Evolution of the Doctrine and Practice of Humanitarian Intervention, The Hague: Kluwer Law International, 1999. Belgium, in its testimony before the ICJ invoked as supporting state practice the three 'best cases' since 1945 that are always invoked by jurists who support a doctrine of humanitarian intervention: These are India's 1971 intervention in East Pakistan; Vietnam's intervention in Cambodia in December 1978, and Tanzania's intervention in Uganda in early 1979."; Wheeler, N.J., "The legality of Allied Force", American Diplomacy; Volume VI Number 2, 2001; also compare the reference made to other military interventions which undeniably led to (at least some form of) humanitarian relief by Hilpold, p.444 as well as in footnote 20. For very intelligible case studies on Tanzania's intervention against Idi Amin's Uganda and Vietnam's removal of the Pol Pot regime in Cambodia, which, according to the authors, were both not driven by humanitarian considerations, see: Wheeler, N.J., Bellamy, A.J.: pp.476-479.

[33] Hilpold, p. 452. Another author has pointed out a suggestion regarding the success of any humanitarian intervention: *"The practical difficulties of successful humanitarian intervention remind us that our goal is to do good rather than feel good, but they should not block action when there is something useful to be done. Sometimes the problem may be an individual dictator: Panama, for example, is clearly better off with General Noriega in jail (whether one calls the U.S. intervention there humanitarian or imperialist) and has become a working democracy."*, for further details, see: Abrahms, E., (Extracts from Krauthammer): "To Fight the Good Fight", The National Interest, Spring 2000, (No. 59).

A further landmark often being referred to in the alleged development of a customary rule of law was the Security Council Resolution 794[34] of 1992 regarding the civil war in Somalia.[35] In this resolution, a threat to international peace and security was found, as the requirement of a consequential enforcement measure under the UN-Charter chapter VII states without any recourse to the transborder effects of the crisis.[36] At first glance, it may seem that the human tragedy taking place within Somalia was sufficient to justify an intervention. We should, nonetheless, not ignore the special political circumstances of Somalia being a so-called "failed state" under which this resolution was adopted. Thus the Security Council recognized the *unique* character of the situation in Somalia. It was very mindful of the deteriorating, complex and extraordinary nature of the events, requiring an immediate and *exceptional* response (as opposed to an "ordinary" procedure that would be likely to be repeated in similar cases).

It is not untrue that overall, it can not be denied that there exists a perceivable and growing tendency of states and organisations to be more and more ready to put humanitarian rationales on the agenda of their *causa belli*.[37] However, a strong argument regarding the opinio juris among states which, quite clearly, is not (yet) accepting the existence of a customary rule of humanitarian intervention, can be seen in the Ministerial Declaration produced by the meeting of Foreign Ministers of the Group of 77 held in New York on 24 September 1999.[38]

---

[34] See: http://daccessdds.un.org/doc/UNDOC/GEN/N92/772/11/PDF/N9277211.pdf?OpenElement for the wording of that resolution.

[35] For more details regarding both the issue of humanitarian intervention as well as the UN peacekeeping operation in Somalia, including special information regarding UNITAF and UNOSOM II as well as a number of relevant UN Security Council Resolutions, see: Hirsch, J., L., and Oakley, R.,B.: Somalia and operation restore hope – Reflections on peacemaking and peacekeeping, US Institute of Peace Press, Washington, 1995; equally consider , Ramsbotham, O., Woodhouse, T.: Humanitarian Intervention in Contemporary Conflict, Polity Press, Cambridge, 1996, chapter 7. pp.193-216; similarly compare the indications made by: Wheeler, p.15.

[36] Compare a different view of these events as, for example, has been expressed with emphasis by Hilpold, pp. 445, 446. Another genuine case of a (collective) intervention with humanitarian purposes was realized with the Security Council Resolution 929 in 1994, when "*the Member States cooperating with the Secretary-General*" were authorised to conduct "*a temporary operation under national command and control aimed at contributing, in an impartial way, to the security and protection of displaced persons, refugees and civilians at risk in Rwanda*"; See the wording of the SCR 929 from 1994 at: http://daccessdds.un.org/doc/UNDOC/GEN/N94/260/27/PDF/N9426027.pdf?OpenElement

[37] See an interesting line of arguments (that different authors try to make fruitful use of in favour of humanitarian intervention) regarding the concept of the "*emergency help*" with reference to the German legal notion of the "*Nothilfe*" (as part of the "*Notwehr*"); (founded in the principle put down in the German Criminal Code in its § 32 I and II Strafgesetzbuch); see for some explanation Hilpold, p. 449 as well as in some footnotes. For a neat overview on state's behaviour and the reasons behind this behaviour (in relation to humanitarian intervention), see the paper from Weisburd, M., A., "Humanitarian Intervention, 1945-89", American Diplomacy, Volume VI, Number 2, 2001.

[38] The reluctance of governments to legitimize foreign invasion in the interest of humanitarianism is understandable in the light of past abuses by powerful states strong enough to intervene and sufficiently interested in doing so tend to have political motives. They have a strong temptation to impose a political solution in their own national interest. Most governments are acutely sensitive to this danger and show no disposition to open article 2 (4) up to broad exception for humanitarian intervention by means of armed force. For more details, see: Dixon, McCorquodale, p.548.

The key passage for present purposes, approved by a remarkable number of 132 states, reiterates that:

> *"the Ministers stressed the need to maintain clear distinctions between humanitarian assistance and other activities of the UN. They rejected the so-called right of humanitarian intervention, which has no basis in the UN Charter or international law."*[39]

In any case, beside the above mentioned considerations concerning the formal elements of customary law, there is another very strong obstacle that does speak against the fact that a customary rule has passed the *status nascendi* and (fully) emerged. It is the core question of Art. 2 (4) of the UN-Charta, under which any examination of humanitarian intervention, must proceed – and therefore, it has indeed been subject to some considerable dispute in the ongoing debate.

Certainly, authors have tried to argue their way around this regulation in favour of humanitarian intervention. What Article 2 (4) UN-Charter prohibits, they stress, is (not more than) the use of force against the territorial integrity or political independence of a State, or in any other manner inconsistent with the purposes of the UN and that a humanitarian intervention is not providing any of these cases. In this vein, Judge R. Higgins has pointed out that it can easily be seen that "even a single plane attacking a country is a use of force against its territorial integrity". But, she asks, "is the answer so clear when the military intervention is not an attack on the State as such, but an operation simply designed to be able to rescue and remove one's threatened citizens? Is that really a use of fore against the territorial integrity of a State or is it not rather a violation of sovereignty – in the same way as a civilian aircraft which enters airspace without permission will surely be violating sovereignty – but still not attacking the State or its territorial integrity"?[40] This argument, convincing as it may seem at first glance, is not persuasive after a closer scrutiny.

---

[39] Cited in Brownlie, p. 712. Interestingly, a Harare-based workshop in 2000 found that states in the region of southern Africa should agree on a doctrine of humanitarian intervention, but also recognised that this venture would be a rather "*long-term process*", for the exact wording see: Protection of civilians in Armed Conflict: An Agenda for the SADC Region, Harare, March 13-15 2000, Office for the Coordination of Humanitarian Affairs (OCHA) & Institute of Development Studies, University of Zimbabwe.

[40] Judge Rosalyn Higgins, as quoted in: Dixon, McCorquodale, p.550; for a discussion of the concept of sovereignty, see: Jackson, J.H.: "Sovereignty-modern: A new approach to an outdated concept", The American Journal of International Law, Vol. 97:782, pp.782-802.

One would, as Shaw points out, have to adopt a "rather artificial definition of the "territorial integrity" criterion in order to permit temporary violations,[41] and the teleological interpretation uttered by Higgins seems not to be within the scope of the possible wording of the UN-Charter.[42] Furthermore, it needs to be stressed that it was this provision on the Charter which marked the historic evolution of organized international relations in the twentieth century prior to which no general prohibition on the use of force existed. It seems that there is not sufficient evidence for the alleged change in the interpretation of the Charter.[43] Although it can not be denied that, rehearsing the content of Article 1 (3) UN-Charta[44], which includes the promotion and encouragement of respect for human rights as one of the purposes of the UN, that international law in general and the United Nations Charter in particular do not rest exclusively on the principles of non-intervention and respect for the sovereignty of the State. Hence, the values on which the international legal system rests also include respect for human rights and "the dignity and worth of the human person. However, the assumption of Higgins does not verify that human rights have attained a place of greater importance on the agenda of international law than the basic principle of Art. 2 (4) UN-Charter.[45]

Besides, for very practical reasons (to which legal analyses can not close eyes completely), and in reality, the difference between a use of force against the territorial integrity of a State and a violation of sovereignty often becomes blurred - not only for strategic but also mere logistical and military reasons and, for this cause, it does not seem opportune to adopt such an understanding of the Charter.[46]

---

[41] Shaw, p.1046.

[42] As Hilpold has rightly pointed out, any teleological interpretation is possible only within the framework of the treaty provisions and must never lead to results which are in breach of the wording of the Charter, see: Hilpold, p. 452.

[43] As Ku and Diehl point out, Art. 2 (4) UN-Charter is generally understood to be comprehensive in nature; Ku and Diehl, p.373.

[44] The commitment to human rights is also, for example, set out in the Preamble to the Charter, and in Articles 55 and 56 of the Charter.

[45] This view, however, could be subject to a change, bearing in mind that the UN-Charter is a dynamic instrument and not a static one, and that there is always room for normative development. There is yet another line of argumentation that makes recourse to the breach of *erga omnes obligations*, leading to a justification of humanitarian intervention measures. For a discussion of this idea see enlightening remarks written by Hilpold p. 453; also compare thoughts provided by Shaw, pp.1045, 1046.

[46] Furthermore, abandoning the strict rule of Article 2(4) UN-Charter could – in view of possible abuses – jeopardize humanitarian issues as well. The strict interpretation of Article 2 (4) UN-Charter does not prejudice the effective implementation of human rights, it is only, as Hilpold has rightly said, "by far an insufficient guarantee for their respect". This means that further instruments have to be sought that could supplement this order; it does not mean that the – albeit imperfect – rules in force should be abolished, for more details see: Hilpold p. 453.

Finally, we wish to point out, that also the International Court of Justice (ICJ) seems to hold the position that humanitarian has no validity in international law. In 1986, the court rejected the notion that the United States could employ force against Nicaragua[47] in order to ensure respect for human rights in that country. It is almost impossible, as Dinstein rightly states, to avoid the conclusion that this language unmistakably places the Court as the authoritative legal institution of the UN in the camp of those who claim that the doctrine of humanitarian intervention is without a legal bases as the present time is concerned.[48]

A norm of humanitarian intervention may be a desirable goal (de lege feranda). Considering this position of *lex lata scripta*, however, the obstacles especially as put down in Art. 2 (4) UN-Charter do not yet allow us to call humanitarian intervention, as far as the present date is concerned, legally permissible, all claims to the contrary notwithstanding.[49]

III.) Potential emergence of a customary right to humanitarian intervention under conditions

As presented above, the principle of the non-use of force as well as the doctrine of non-intervention represent serious barriers to the development of a customary right of humanitarian intervention. However, we wish to agree with Zacklin, who has stated that indeed, these principles are not immutable, and their meaning may change over time through the practice of states. "In order to overcome these obstacles", he says, "an emerging norm of humanitarian intervention would have to accommodate these doctrines", or otherwise be able to demonstrate that state usus has achieved what amounts to a de facto amendment of the controlling principle in international law.[50]

---

[47] See: "Military and Paramilitary Activities in and against Nicaragua Case", (Nicaragua vs. USA), ICJ Report 1986, 14, International Court of Justice.

[48] Dinstein, Y.: War, Aggression and Self-defence, Cambridge: Cambridge University Press, 3rd edition, 2001, p.67.

[49] Another major obstacle to be overcome in view of the legality of humanitarian intervention (which we are not able to discuss, for reasons of space) is the principle of non-intervention in the internal affairs of States, a customary rule of international law, which, as Zacklin rightly says, in the eyes of the overwhelming majority of international lawyers, has the character of *jus cogens*, a peremptory norm from which no derogation is possible. This principle is reflected in numerous international instruments adopted by the U.N. General Assembly, including the Declaration on Friendly Relations, and has been affirmed on several occasions by the ICJ, for example in the Corfu Channel case and in the Nicaragua case; compare the suggestions made by Zacklin, R. "Beyond Kosovo", in Ku and Diehl, p.374. Although, as some authors may claim, it may not be perfectly impossible to argue that a humanitarian intervention does not interfere within the internal affairs of a state, this does not seem persuasive.

[50] Zacklin, R. "Beyond Kosovo", in Ku and Diehl, p.375.

A number of substantive and institutional criteria or pre-conditions, that might ease the way for states to accept a right to, and could be considered justifying humanitarian intervention, have been suggested by governments and scholars, or have emerged from the debate in the United Nations General Assembly. It might be around these elements that the eventual formation of a customary norm develops.[51] One of the most authoritative catalogues dates back to 1974 and has been elaborated within the International Law Association.[52]

Permit us to quote the text in full:

1. *There must be an imminent or ongoing gross human rights violation.*[53]
2. *All non-intervention remedies available must be exhausted before a humanitarian intervention can be commenced (See also criterion 9)*[54]
3. *A potential intervenor before the commencement of any such intervention must submit to the Security Council, if time permits, its views as to the specific limited purpose the proposed intervention would achieve.*[55]
4. *The intervenor's primary goal must be to remedy a gross human rights violation and not to achieve some other goal pertaining to the intervenor's own self-interest.*
5. *The intent of the intervenor must be to have as limited an effect on the authority structure of the concerned State as possible, while at the same time achieving its specific limited purpose.*
6. *The intent of the intervenor must be to intervene from as short a time as possible, with the intervenor disengaging as soon as the specific limited purpose is accomplished.*

---

[51] Very generally, and as Zacklin appropriately indicates, the use of force in international relations must always be treated as an exceptional measure and is an extremely grave matter under any circumstances, every effort must be made to exhaust all possible peaceful means of resolving humanitarian crises. Primacy must, therefore, be given to preventive measures, including the greater use and development of early warning systems and preventive diplomacy, deployment and disarmament, see: Zacklin, R. "Beyond Kosovo", in Ku and Diehl, p.379; furthermore, compare suggestions provided by Shaw, pp.1045-1048.

[52] This catalogue has been cited by Hilpold pp. 455, 456.

[53] In this vein, Kap suggests a number of (broad) instances in which a humanitarian intervention may be considered as a legal action, including *"gross and systematic human rights abuses, including genocide; the suppression of the clearly demonstrated will of the majority such as the overthrow of a democratically elected government; clear cases of failed states where central authority is non-functioning and the civilian population is at the mercy of militias, warlords, criminal gangs etc.; the illegal and inhumane use of power by one side or the other during a civil war, encompassing an attempt at secession and or ethnic/religious self determination*"; see: Kap, October 2000, Vol. 24, No.7.

[54] Compare the remarks made by Franck, who talks about an "*exhaustion of the multilateral remedies established by the Charter system*", quoted in Dixon, McCorquodale, p.549.

[55] As the British international lawyer Vaughn Lowe points out, the *'right to act'* is not a unilateral right, under which each and every state may decide for itself that intervention is warranted. Rather, the *'prior decision of the Security Council is asserted as a key element of the justification.'* For example, in the case of the military actions of NATO in the Kosovo, the Security Council had determined under Chapter VII in Resolutions 1199 and 1203 that action was necessary to avert an impending humanitarian disaster. It is not enough for individual states to point to the existence of an imminent humanitarian catastrophe; rather, the Council must have identified a human rights emergency as a threat to peace and security under Chapter VII; compare the interesting remarks made by Wheeler, American Diplomacy, Volume VI, Number 2; In this respect, it is equally important to note that under its Charter, and in terms of the past practices of the UN Security Council (UNSC), it cannot authorise a military action purely on grounds of human rights violations. To act under Chapter VII, its action must be premised on a formal determination of the existence of threat to international peace and security; compare the remarks made by Kap, October 2000, Vol. 24, No.7.

7. *The intent of the intervenor must be to use the least amount of coercive measures necessary to achieve its specific limited purpose.*[56]
8. *Where at all possible the intervenor must try to obtain an invitation to intervene from the recognized government and thereafter cooperate with the recognized government.*
9. *The intervenor, before its intended intervention, must request a meeting of the Security Council in order to inform it that the humanitarian intervention will take place only if the Security Council does not act first. (See also criteria 2 and 3.).*
10. *An intervention by the United Nations is preferred to one by regional organization*[57]*, and an intervention by a regional organization is preferred to one by a group of States or an individual State.*[58]
11. *Before intervening, the intervenor must deliver a clear ultimatum or "peremptory demand" to the concerned State insisting that positive actions be taken to terminate or ameliorate the gross human rights violations.*
12. *Any intervenor who does not follow the above criteria shall be deemed to have breached the peace, thus invoking Chapter VII of the Charter of the United Nations.*[59]

It is possible that future state practice will revolve around these principles[60] and that the international community will go with the words of the UN Secretary General, Kofi A. Annan, who, on different occasions expressly aligned himself with those scholars and

[56] Kap rightly points out that this condition can not always easily be seen in a system of clear black and white. He asks: "Should the international community intervene only when the prospects for success are great? What are the yardsticks for measuring success?"; for further details see: Kap, October 2000, Vol. 24, No.7. Equally thought-provoking are the questions raised by , Abrahms, E., (Extracts from Krauthammer): "To Fight the Good Fight", The National Interest, Spring 2000, (No. 59), who says: *"How hard do you fight, how much do you risk, how many do you kill when direct national interests are quite limited? To these questions one more must be added: how likely is success? To impose hardship and to take lives when there is little chance of solving anything is not only feckless but immoral"*.

[57] A paper with a special outlook on the role of Regional Organisations (under chapter VIII UN-Charter), which gives a neat insight into this area of activity has been provided by: Cha, K.: "Humanitarian Intervention by Regional Organizations Under the Charter of the United Nations", Seton Hall Journal of Diplomacy and International Relations, Summer/Fall 2002, p.134-145.

[58] See some interesting remarks on the special access of humanitarian agencies (like, for instance, the ICRC and other NGOs) to a conflict region in which a humanitarian intervention takes place as well as an overview on integration difficulties of humanitarian aid agencies at: Charny, J., R.: "Humanitarian Aid and Intervention: The challenges of integration - Upholding Humanitarian Principles in an Effective Integrated Response", Ethics and International Affairs, Issue 18, no. 2 (2004); further insight into this field can also be gained from the article written by Minear, see: Minear, L.: "Humanitarian Aid and Intervention: The challenges of integration - Informing the Integration Debate with Recent Experience", Ethics and International Affairs, Issue 18, no. 2 (2004).

[59] For this point, compare the remarks made by Judge (at the ICC) Simma, who specifically talks about the actions of NATO in the context the military actions against the Former Republic of Yugoslavia in the Kosovo crisis as well as the relationship between the UN and the NATO; Regarding the question of the legality of a humanitarian intervention, he states (at page 22): *"(…) that unfortunately there do occur "hard cases" in which terrible dilemmas must be faced and imperative political and moral considerations may appear to leave no choice but to act outside the law. The more isolated these instances remain, the smaller will be their potential to erode the precepts of international law, in our case the UN Charter. As mentioned earlier, a potential boomerang effect of such breaches can never be excluded, but this danger can at least be reduced by indicating the concrete circumstances that led to a decision ad hoc being destined to remain singular."*. See: Simma, Bruno: "NATO, the UN and the Use of Force: Legal Aspects", EJIL, Vol. 10, 1999 pp.1-22.

[60] Wheeler has said: *"(…) an explicit exception might be carved out of the existing law that permits the action under specified conditions provided that the actor invoking the new rule can demonstrate that his or her action satisfies these."*, see: Wheeler p.3.

members of civil society who, for some time now, have advocated what has been perceived as the "embryo of a rule of humanitarian intervention in international law". In April 1999, in an address to the UN Human Rights Commission, he stated that "[e]merging slowly, but I believe surely, is an international norm against the violent repression of minorities that will and must take precedence over concerns of state sovereignty".[61]

Whether his hope will remain wishful thinking or indeed see the light of the day in the form of another rule of the "jus ad bellum"[62] (and subsequently possibly an era of a new "interventionalism"[63]) will once more be left for future analysis.[64]

[61] Zacklin, R. "Beyond Kosovo", in Ku and Diehl, pp.375, 376.
[62] See interesting remarks on the two notions of "*jus ad bellum*" and "*jus in bello*" in relation to humanitarian intervention by: Heinze, E.A.: Waging War for Human Rights: Toward a Moral-Legal Theory of Humanitarian Intervention, Human Rights and Human Welfare, Center on Rights Development, Volume 3, 2003, p.85.
[63] For a very theoretical outlook on this notion, see: Orford, A.: "Muscular Humanitarism: Reading the Narratives of the New Interventionism", EJIL, (10), 1999, pp. 679-711.
[64] For an analysis seeking to develop a new approach to humanitarian intervention, in special relation to UN-involvement (e.g. through peace-keeping missions), referring to experiences from Congo, Bosnia and Somalia, see: Mockaitis, T., R.: Peace Operations and Intrastate Conflict – The Sword or the Olive Branch?, Chapter 5: "Toward a New Paradigm", Westport, Connecticut, London, 1995, pp.125-141.

Conclusion

The "illegal just war" of humanitarian intervention remains a heavily contested issue after the end of the Cold War and, as it seems, the near future of the new millennium.

Given the present international scenario, intra-state tensions, the form of conflict which we are concerned with in the realms of humanitarian intervention, are unlikely to get attenuated in the foreseeable future. If anything, these may be exacerbated, as the sad examples from the Democratic Republic of Congo, the Sudan as well as smaller conflicts, for instance the struggle in Chechnya, to name but these, more than tangibly demonstrate.

The abdication of legal, moral and ethical responsibility[65] in the society of states in the face of the genocide in Rwanda in 1994, where more than one million people died in about 100 days, suggests that we should be cautious about investing too much faith in state leaders as guardians of human rights or "knights of humanity"[66] in world politics, and suspicious about their motivation when they do invoke human rights to legitimize military action.[67] It will therefore be important, alongside state actions, to "distinguish between power that is based on relations of domination and force, and power that is legitimate because it is predicated on shared norms [since] law can be the servant of particular interests rather than an expression of the general will".[68]

However, it is on the other hand morally unacceptable if states behave as gangsters towards their own people, "treating sovereignty as a licence to kill"[69], an awful policy that Bashir's Sudan can presently be accused of.[70]

[65] For the idea of the "*responsibility to protect*", see comments by: Macfarlane, S.N., Thielking, C.J., and Weiss, T.G.: "The Responsibility to Protect: is anyone interested in humanitarian intervention?", Third World Quarterly, Vol.25, 2004, No.5, p.978.
[66] Ramsbotham and Woodhouse as cited in: Dinstein, p.67.
[67] Wheeler and Bellamy, p.471.
[68] For further remarks on this thought, see: Wheeler pp.2,3.
[69] Wheeler and Bellamy, p.471.
[70] We will be able to witness if the recent peace-accord, signed in early January 2005 in Nairobi, Kenya, will make any significant difference to the plight of the people in the Darfur region, who have been victims of killing, rape, and expulsion from their villages.

It remains to be seen whether states response towards the concept of humanitarian intervention will remain selective (why did NATO act in Kosovo and why had the organization done nothing to address the equally terrible plight of the Turkish Kurds, the Chechens, or the East Timorese[71] ?)[72]. As Chris Brown has rightly said: "The general problem here is that humanitarian intervention is always going to be based on the cultural predilections of those with the power to carry it out".[73] If a response to gross human rights violations becomes an action that meets the wider agreement of a sufficient number of states, finally a legitimacy of humanitarian intervention in the international society could be enhanced as a rightful exception to the rules of sovereignty, non-intervention, and non-use of force and a customary law might emerge around the above determined conditions[74].

However, it could also happen, as Wheeler and Bellamy have said with good reason, that humanitarian intervention (just as the venture of humanitarian assistance)[75] will "belong in the realm not of *law* but of *moral choice*, which nations, like individuals must sometimes make", thus not emerging and warranted as a legal right but an action driven by mere *moral* and not *legal* imperatives.[76] Probably, they add, "the claim that humanitarian intervention is morally required is a much stronger one than the proposition that there is a legal right to engage in this practice because whilst the existence of a right enables action it does not determine it."

Ultimately the question we will have to ask ourselves is whether the most pressing challenge really is to keep legal barriers that allegedly limit the possible abuse of a potential right to intervene on humanitarian grounds and that are aimed at ensuring a stable society of states that are generally not being allowed to militarily interfere in another states' territory, or whether it is to ensure that interventions widely morally and ethically believed necessary to stop mass atrocities are actually being undertaken.

---

[71] For an overview on the intervention in Timor, see: Cotton, J.: "Against the Grain: The East Timor Intervention", Survival (The International Institute for Strategic Studies, Vol. 43, No.1, Spring 2001, pp-127-142.

[72] For a recent discussion of contemporary issues, see: Roberts, A.: "Law and the Use of Force after Iraq", Survival, (The International Institute for Strategic Studies), Vol.45, No.2, Summer 2003, pp.31-56.

[73] Statement as cited in: Wheeler and Bellamy, p.474.

[74] See a whole chapter about the notion of legitimacy (with special relation to humanitarian intervention) in international society: Wheeler, pp.4-11.

[75] To name, again, the recent Tsunami-disaster in the Asian region and the international response that it has brought forth, we have been able to see that not only has humanity shown itself at its best here, but there has also been military intervention, not for combat purposes, but for the sole aim of effective logistical delivery of humanitarian aid, where typically enough legal rigmaroles have played only second fiddle.

[76] Wheeler and Bellamy, p.476.

Bibliography

- Abiew, Francis Kofi: The Evolution of the Doctrine and Practice of Humanitarian Intervention, The Hague: Kluwer Law International, 1999.

- Abrahms, E., (Extracts from Krauthammer): "To Fight the Good Fight", The National Interest, Spring 2000, (No. 59), retrieved from Ciaonet on December, 20th, 2004.

- Bellamy, A.J.: "Ethics and Intervention: The "Humanitarian Exception" and the Problem of Abuse in the Case of Iraq", Journal of Peace Research, Volume 41, Number 21, March 2004.

- Brownlie, I., Principles of public international Law, 6th ed., Oxford University Press, 2003.

- Cha, K.: "Humanitarian Intervention by Regional Organizations Under the Charter of the United Nations", Seton Hall Journal of Diplomacy and International Relations, Summer/Fall 2002.

- Charny, J., R.: "Humanitarian Aid and Intervention: The challenges of integration - Upholding Humanitarian Principles in an Effective Integrated Response", Ethics and International Affairs, Issue 18, no. 2 (2004).

- Chesterman, S.: Just war or just peace ? – Humanitarian Intervention and International Law, Oxford University Press, 2001.

- Cotton, J.: "Against the Grain: The East Timor Intervention", Survival (The International Institute for Strategic Studies, Vol. 43, No.1, Spring 2001.

- Dinstein, Y.: War, Aggression and Self-defence, Cambridge: Cambridge University Press, 3rd edition, 2001.

- Dixon, M., 2000: Textbook on International Law, (Oxford University Press, 4th ed.).

- Dixon, M., McCorquodale, R.,2003: Cases and Materials on International Law, (Oxford University Pres, 4th ed. Oxford, New York (i.a.).

- Finnemore, M., reviewed by Cardenas, S., "The Purpose of Intervention: Changing Beliefs about the Use of Force", Ethics & International Affairs Annual Journal of the Carnegie Council on Ethics and International Affairs, Volume 18, No. 1 (Winter 2004), retrieved from Ciaonet on December, 21st, 2004.

- Guicherd, C.: "International Law and the War in Kosovo", Survival, (International Institute for Strategic Studies), Vol. 41, No.2, Summer 1999, pp.19-34.

- Greenwood C.: "International Law and the NATO Intervention in Kosovo Memorandum submitted to the Foreign Affairs Committee of the House of Commons", as quoted in: Dixon, M., McCorquodale, R.,2003: Cases and Materials on International Law, (Oxford University Pres, 4th ed. Oxford, New York (i.a.).

- Hadzic, M.: "Security Ranges Of NATO intervention in Kosovo", Working paper published by the Copenhagen Peace Research Institute, September 1999, retrieved from Ciaonet on December, 20th, 2004.

- Heinze, E.A.: Waging War for Human Rights: Toward a Moral-Legal Theory of Humanitarian Intervention, Human Rights and Human Welfare, Center on Rights Development, Volume 3, 2003; retrieved from Ciaonet on December 16th, 2004.

- Hilpold, P., "Humanitarian Intervention: Is there a need for a legal reappraisal?", EJIL, (2001), Vol. 12 No.3; retrieved from BHI on December 21st, 2004.

- Hirsch, J., L., and Oakley, R.,B.: Somalia and operation restore hope – Reflections on peacemaking and peacekeeping, US Institute of Peace Press, Washington, 1995;

- Jackson, J.H.: "Sovereignty-modern: A new approach to an outdated concept", The American Journal of International Law, Vol. 97:782, pp.782-802.

- Kap, K.: "Humanitarian Intervention and the changing role of the UN", Strategic Analysis – A monthly journal of the IDSA, October 2000 (Vol. XXIV No. 7), retrieved from Ciaonet on December, 20th, 2004.

- Ku, C., and Diehl, P.,F. (ed.), International law – Classic and contemporary readings, Boulder, London, 2003.

- Macfarlane, S.N., Thielking, C.J., and Weiss, T.G.: "The Responsibility to Protect: is anyone interested in humanitarian intervention?", Third World Quarterly, Vol.25, 2004, No.5.

- Macrae, J.: "Humanitarian aid and intervention: The challenges of integration – Understanding integration from Rwanda to Iraq", Ethics and International Affairs, Issue 18, no. 2 (2004); retrieved from Ciaonet on December, 20th, 2004.

- Minear, L.: "Humanitarian Aid and Intervention: The challenges of integration - Informing the Integration Debate with Recent Experience", Ethics and International Affairs, Issue 18, no. 2 (2004).

- Mockaitis, T., R.: Peace Operations and Intrastate Conflict – The Sword or the Olive Branch?, Chapter 5: "Toward a New Paradigm", Westport, Connecticut, London, 1995, pp.125-141.

- Moeller, B.: "UN Military Demands and Non-Offensive Defence Collective Security, Humanitarian Intervention and Peace Support Operations", Working paper of the Copenhagen Peace Research Institute, University of Queensland, Brisbane, Australia, July 1996.

- Orford, A.: "Muscular Humanitarism: Reading the Narratives of the New Interventionism", EJIL, (10), 1999, pp. 679-711.

- Quadraat, de Jonge, C.: "Intervention in Internal Conflicts: Legal and Political Conundrums", Working Papers Carnegie Endowment for International Peace, Global Policy Program, Number 15, August 2000.

- Ramsbotham, O., Woodhouse, T.: Humanitarian Intervention in Contemporary Conflict, Polity Press, Cambridge, 1996.

- Reisman, M.W.: "Unilateral Action and the Transformations of the World Constitutive Process: The Special Problem of Humanitarian Intervention", EJIL, 2000, Vol. 11 Nr.1, pp.3-18.

- Roberts, A.: "Law and the Use of Force after Iraq", Survival, (The International Institute for Strategic Studies), Vol.45, No.2, Summer 2003, pp.31-56.

- Ryniker, A.: "The ICRC's position on "humanitarian intervention"", IRRC, June, 2001, Vol. 83, Nr.842, pp.527-532.

- Sarooshi, "Humanitarian Intervention and International Humanitarian Assistance: Law and Practice", Wilton Park Paper 86, the UK, November 1993.

- Shaw, M.,N.: International Law, Cambridge University Press, Fifth Edition, 2003.

- Simma, Bruno: "NATO, the UN and the Use of Force: Legal Aspects", EJIL, Vol. 10, 1999 pp.1-22.

- Simma, B.: The Charter of the UN: A Commentary, (Oxford: Oxford University Press, 1995).

- Smith, M.J., "Humanitarian Intervention: An Overview of the Ethical Issues", Ethics and International Affairs – Annual Journal of the Carnegie Council on Ethics and International Affairs, Volume 12, 1998, retrieved from Ciaonet on December 17th, 2004.

- Watkin, K.: "Controlling the use of force: A role for human rights norms in contemporary armed conflict", American Journal of International Law, Vol. 98:1, p.1-35.

- Weisburd, M., A., "Humanitarian Intervention, 1945-89", American Diplomacy, Volume VI, Number 2, 2001, retrieved from Ciaonet on December, 20th, 2004.

- Wheeler, N.,J. Saving Strangers – Humanitarian Intervention in International Society, Oxford University Press, 2000, Part One.

- Wheeler, N.J.: "The legality of Allied Force", American Diplomacy, Volume VI, Number 2, 2001, retrieved from Ciaonet on December 20th, 2004.

- Wheeler, N.J., Bellamy, A.J., "Humanitarian intervention and world politics", in The Globalization of World Politics, Baylis, John and Smith, Steve (Oxford University Press, 2nd edition 2001).

- Zacklin, R. "Beyond Kosovo", in Ku, C., and Diehl, P.,F. (ed.), International law – Classic and contemporary readings, Boulder, London, 2003.

No author's name provided:

- "Protection of civilians in Armed Conflict: An Agenda for the SADC Region", Harare, March 13-15 2000, Office for the Coordination of Humanitarian Affairs (OCHA) & Institute of Development Studies, University of Zimbabwe; retrieved from Ciaonet on December 18th, 2004.

- "Military and Paramilitary Activities in and against Nicaragua Case", (Nicaragua vs. USA), ICJ Report 1986, 14, International Court of Justice (ICJ).

- "Human Rights Defenders on the Frontlines of Freedom - Protecting Human Rights in the Context of the War on Terror", Conference Report (November 11-12, 2003), May 2004, Carter Center, Atlanta, USA, retrieved from Ciaonet of December, 19th, 2004.

Accessed Websites:

- http://www.hrw.org/campaigns/darfur/index.htm (accessed on January 8th, 2005).

- http://daccessdds.un.org/doc/UNDOC/GEN/N94/260/27/PDF/N9426027.pdf?OpenElement (Main Bodies section, Security Council, accessed on January 14th, 2005)

- http://www.unhcr.ch/cgi-bin/texis/vtx/tsunami?page=briefing (Accessed on January 15th, 2005)