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HUMANITARIAN INTERVENTION BY REGIONAL ACTORS IN INTERNAL CONFLICTS:

THE CASES OF ECOWAS IN LIBERIA AND SIERRA LEONE

*Jeremy Levitt**

INTRODUCTION

Since the end of the cold war it appears that customary international law¹ has taken a normative legal shift from traditional prohibitions against forcible intervention in the internal affairs of states, toward the recognition of a right to humanitarian intervention² by groups of states and regional actors³ in internal conflicts.⁴ Although a role for regional organizations in hu-

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1. Customary international law can be defined as: “[a] general and consistent practice of states followed by them from a sense of legal obligation.” RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102 (2) (1987); Moreover, to ascertain customary international law, judges resort to “the customs and usages of civilized nations, and, as evidence of these, to the works of jurists and commentators” *The Paquete Habana*, 175 U.S. 677, 700, 20 S.Ct. 290, 299, 44 L.Ed. 320 (1900).

2. Humanitarian intervention has been defined as: “[T]he justifiable use of force for the purpose of protecting the inhabitants of another state from treatment so arbitrarily and persistently abusive as to exceed the limits within which the sovereign is presumed to act with reason and justice.” ELLERY C. STOWELL, *INTERNATIONAL LAW: A RESTATEMENT OF PRINCIPLES IN CONFORMITY WITH ACTUAL PRACTICE* 349 (1931); For an admirable delineation of the history of humanitarian intervention, see generally FERNANDO R. TESÓN, *HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY* (1996).

3. A regional actor may be defined as any regional organization, agency, entity or arrangement made up of and empowered by states to represent their interests, whether economic, political, military, social, cultural or religious.

4. For an exemplary article discussing U.N. action in Iraq, Somalia, Haiti, Rwanda and Bosnia, arguing that “international law today recognizes, as a matter of practice, the legitimacy of collective forcible humanitarian intervention - of military measures authorized by the Security Council for the purpose of remedying serious human rights viola-

manitarian intervention has been established, until the advent of the Economic Community of West African States (ECOWAS) missions in Liberia and Sierra Leone,⁵ states' practices suggested that prior approval by the Security Council was a prerequisite to any humanitarian intervention.⁶ However, for the first time the ECOWAS Cease-fire Monitoring Group (ECOMOG) missions in Liberia and Sierra Leone provide two clear examples of unilateral humanitarian intervention by a regional actor that enjoyed support from the whole of the international community.⁷ Likewise, for the first time there exists contemporary examples of popular humanitarian interventions that have derived their legal basis from customary international

tions," see Fernando R. Tesón, *Collective Humanitarian Intervention*, 17 MICH. J. INT'L L. 323, 324 (1996). See also Captain Davis L. Brown II, USAF, *The Role Of Regional Organizations In Stopping Civil Wars*, 41 A.F.L. REV. 235, (1997) (citing David Wippman, *Enforcing the Peace: ECOWAS and the Liberian Civil War*, in ENFORCING RESTRAINT: COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS 191, 157-207 (Lori Fisler Damosch, ed., 1993) ("as regional conflicts proliferate, pressure is likely to build on regional organizations to assist or even to supplant the United Nations in handling at least some of these crisis."); W. Michael Reisman, *Humanitarian Intervention and Fledgling Democracies*, 18 FORDHAM INT'L. L.J. 794 (1995); Richard Falk, *The Complexities of Humanitarian Intervention: A New World Order Challenge*, 17 MICH. J. INT'L L. 491, 503-04 (1996).

5. ECOWAS was established under the Treaty of Lagos in 1975. ECOWAS Executive Secretariat, Abuja, Nigeria, *Treaty of the Economic Community of West African States (ECOWAS)*, 28 May 1975. See Wippman, *supra* note 4, at 154. ECOWAS has taken enforcement action in both Liberia and Sierra Leone through its "Cease-firing Monitoring Group," commonly referred to as ECOMOG. See *id.* at 177. For those who are skeptical as to whether ECOWAS is a regional actor (agency or arrangement) as enumerated under Chapter VIII Article 53 of the U.N. Charter, see S.C. Res. 1132, U.N. SCOR, 3822th mtg., U.N.Doc. S/RES/1132 (1997), which calls for a petroleum and arms embargo against Sierra Leone, and states, "[a]cting also under Chapter VIII of the Charter of the United Nations, authorizes ECOWAS . . . to ensure strict implementation of the provisions of this resolution . . . by halting inward maritime shipping in order to inspect and verify cargoes and destinations . . ." *Id.* If ECOWAS were not recognized as a "regional agency or arrangement," the U.N. would not have authorized it to take enforcement action in Liberia and Sierra Leone under Chapter VIII of the U.N. Charter. Hence, if the U.N. recognizes ECOWAS as a "regional actor," arguments to the contrary would appear moot. See Michael Akehurst, *Enforcement Action Regional Agencies, with Special Reference to the Organization of American States*. 42 BRIT. Y.B. INT'L. L. 175, 177-83 (1967) (discussing what constitutes a regional agency). Akehurst reports that "[t]he relationship between the United Nations and regional arrangements was second only to the question of voting procedure in the Security Council as a source of bitter argument at the San Francisco Conference, which indeed at one time came close to breaking up over regional arrangements." *Id.* at 175.

6. See Brown, *supra* note 4, at 275.

7. The U.N. Security Council legitimized the legality of both ECOWAS interventions by adopting resolutions under Chapter VII of the U.N. Charter that made mandatory previous ECOWAS embargoes - the Security Council sanctioned petroleum and arms embargoes against both Liberia (see S.C. Res. 788, U.N. SCOR, 3138th mtg., U.N.Doc. S/RES/788 (1992)) and Sierra Leone (see S.C. Res. 1132, U.N. SCOR, 3822th mtg., U.N.Doc. S/RES/1132 (1997)). Further, under S.C. Res. 866, for the first time the U.N. co-deployed forces with an organization (ECOMOG-Liberia) that was already operational. See S.C. Res. 866, U.N. SCOR, 3281st mtg., U.N.Doc. S/RES/866 (1993).

law, rather than the U.N. Charter.⁸ The ECOWAS interventions in Liberia and Sierra Leone, and the Inter-African Mission to Monitor the Implementation of the Bangui Agreements (MISAB) in the Central African Republic (CAR) are cases in point.⁹ As a result, the customary international law doctrine of humanitarian intervention seems to have been "revived."¹⁰

For purposes of this article, "humanitarian intervention" can be taken to mean: Intervention in a state involving the use of force (U.N. action in Iraq and Somalia or ECOWAS action in Liberia and Sierra Leone) or threat of force (U.N. action in Haiti), where the intervenor deploys armed forces and, at the least, makes clear that it is willing to use force if its operation is resisted - as it attempts to alleviate conditions in which a substantial part of the population of a state is threatened with death or suffering on a grand scale.¹¹

Presently, customary international law appears to recognize four exceptions to the principle of non-intervention in the domestic or internal affairs of states: (1) when a *de jure* government requests or consents to intervention; (2) when a group of states or a regional actor invokes a right to humanitarian intervention; (3) when a state acts in self-defense; and (4) counter-intervention by a state to offset an illegal prior intervention by another state.¹²

Moreover, in consonance with the above exceptions, international law

8. See *Report of the Secretary General Pursuant To Resolution 1136 (1997) Concerning The Situation In the Central African Republic*, 53rd. sess., U.N. SCOR, U.N. Doc. S/1998/61 (1998).

9. See *id.* On January 31, 1997, the Heads of State of Gabon, Burkina Faso, Chad and Mali established MISAB to restore "peace and security in the Central African Republic by monitoring the implementation of the Bangui Agreements and conducting operations to disarm the former rebels, the militia and all other unlawfully armed persons." *Id.* According to the United Nations, on February 8, 1997, "MISAB was deployed in Bangui, comprising a total of some 800 troops from Burkina Faso, Chad, Gabon and Mali; and later from Senegal and Togo, under the military command of Gabon and with logistical and financial support of France." *Id.*

10. Yet, many commentators remain steadfast in their non-interventionist trenches, maintaining that international law does not recognize any right to humanitarian intervention. See L. OPPENHEIM, *INTERNATIONAL LAW* § 134, at 305 (Lauterpacht ed. 8th ed. 1955); see also Ulrich Beyerlin, *Humanitarian Intervention*, in 3 *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* 211, 212 (Rudolf Dolzer et al., eds. 1982). Other commentators argue that at the very most, enforcement action may only be taken under the authority of the United Nations. See generally, R. Higgins, *Peace and Security Achievements and Failures*, 6 *EUR. J. INT'L L.* 445 (1995); John Quigley, *The "Privatization" of Security Council Enforcement Action: Threat to Multilateralism*, 17 *MICH. J. INT'L L.* 249, 249-50 (1995-96).

11. See Christopher Greenwood, *Is there a right to humanitarian intervention?*, 49 *THE WORLD TODAY* 34 (1993).

12. See David Wippman, *Change Continuity in Legal Justifications for Military Intervention in Internal Conflicts*, 27 *COLUM. HUM. RTS. L. REV.* 425, 446 (1995-96). However, Wippman states that some of these justifications, at least in particular applications, are not without controversy. See *id.*

seems to recognize the following four types of intervention: (1) unilateral intervention by a state or group of states acting on their own initiative (United States and allies in Iraq, MISAB in the CAR and Nigeria in Sierra Leone); (2) unilateral intervention by a regional actor acting on its own initiative (ECOWAS in Liberia and Sierra Leone); (3) intervention authorized by the United Nations but not taken by it (United States in Somalia and Haiti, and France and Senegal in Rwanda); and (4) intervention taken by the United Nations (Liberia, Yugoslavia and the CAR). The foregoing article is primarily concerned with unilateral intervention as described in (2) above. But, in an attempt to determine when the international community condones humanitarian intervention, reference will be made to the other types of intervention.

The legal basis for unilateral intervention is different from an intervention taken under the authority of the United Nations. On this point Christopher Greenwood comments:

Intervention might be the unilateral action of a state or group of allies or an operation conducted under the authority of the United Nations. But the legal issues would be different. United Nations intervention would have to be based on powers conferred by the U.N. Charter, whereas any right of unilateral intervention could only be derived from customary international law.¹³

Specifically, it may be said that an intervention which falls under either (1) or (2) above derives its legal basis from customary international law, whereas an intervention under (3) and (4) derives its basis from Chapter VII of the U.N. Charter.

This article concludes that today customary international law seems to provide for an exception to the international law prohibition against unilateral intervention in the domestic or internal affairs of states.¹⁴ The international community seems to be witnessing the initial stages of a shift in the law *de lege ferenda*, and sanctioning unilateral humanitarian intervention by groups of states or regional actors in internal conflicts.¹⁵ The law *de lege lata* appears to permit unilateral humanitarian intervention by groups of states or regional actors in three instances: (1) when there are human rights abuses within a state that are so egregious as to violate the *jus cogens* norms of international law;¹⁶ (2) when a state has collapsed and is withering into a state

13. Greenwood, *supra* note 11, at 34.

14. See *Report on U.N. Decade of International Law*, G.A. Res. 50, U.N. GAOR, 15th Sess., U.N. Doc. A/368 (1995). The resolution calls on member states to promote acceptance of and respect for the principles of international law, and encourage its progressive development.

15. Unilateral humanitarian intervention can be taken to mean humanitarian intervention by a group of states or regional actor which has its legal basis in customary international law rather than the U.N. Charter. The term *de lege ferenda* is "the law as it may be, or should be, in the future" and the term *de lege lata* is "the law as it currently stands."

16. A *jus cogens* norm, also known as a "peremptory norm" of international law "is a norm accepted and recognized by the international community of states as a whole as a

of anarchy;¹⁷ and (3) to safeguard democracy when a democratic government has been violently and illegally dislodged against the will of its domestic population.¹⁸ The above should be viewed as the normative criteria on which humanitarian intervention should be based.¹⁹ Within this context, it is impor-

norm from which no derogation is permitted and from which can be modified only by a subsequent norm of general character." Vienna Convention of the Law of Treaties, May 23, 1969, Art. 53, 1155 U.N.T.S., 332, 344; *Klock v. Cain*, 813 F. Supp. 1430, 1433 n.8 (C.D. Cal. 1993) (adopting Vienna Convention's definition of *jus cogens*). Further, "sitting atop the hierarchy of international law, *jus cogens* norms enjoy the greatest clout, preempting both conflicting treaties and customary international law." W. D. Verwey, *Humanitarian Intervention under International Law*, 32 NETH. INT'L L. REV. 357, 418 (1985); see Ved P. Nanda, *Tragedies in Northern Iraq, Liberia, Yugoslavia, and Haiti—Revisiting the Validity of Humanitarian Intervention Under International Law*, 20 DENV. J. INT'L L. & POL'Y 305, 310 (1992); *Prinz v. Federal Republic of Germany*, 26 F. 3d 1166, 1179 (D.C. Cir. 1994); *United States v. Alfried Krupp*, reprinted in 10 TRIALS OF WAR CRIMINALS BEFORE THE NUREMBERG MILITARY TRIBUNAL UNDER CONTROL COUNCIL LAW 1395 (1950). In this context, the Nuremberg Trials made clear that "to prepare, incite, or wage war of aggression . . . to persecute, oppress, or do violence to individuals or minorities on political, racial, or religious grounds in connection with such war, or to exterminate, enslave, or deport civilian populations, is an international crime." *Prinz*, 26 F. 3d at 1174 (quoting R. Jackson, *Final Report to the President on the Nuremberg Trials* (Oct. 7, 1946), cited in R. JACKSON, THE NUREMBERG CASE XIV-XV (1971) (emphasis added)). Thus, with regard to the criteria mentioned above, humanitarian intervention should be legally justified when groups of states or regional actors attempt to stop or prevent a state from violating the *jus cogens* norms as proscribed by Nuremberg. In such cases, states should be expected to fulfill their obligations *erga omnes* and intervene. See *id.*

17. Anarchy has been defined as "having no ruler . . . absence of government . . . a state of lawlessness or political disorder due to the absence of governmental authority." WEBSTER'S NEW COLLEGIATE DICTIONARY 83 (9th ed. 1988). Accordingly, the character of the state during the conflicts in Rwanda, Somalia and Liberia epitomize this definition. Although some commentators have referred to such states as failed states, the author believes that collapsed states is the more accurate term. The former signifies a permanent state of being whereas the latter signals a temporary state. See Brown, *supra* note 4, at 272-73.

18. See generally, Lois Fielding, *Taking the next Step in the Development of the New Human Rights: The Emerging Right of Humanitarian Intervention Assistance to Restore Democracy*, 5 DUKE J. COMP. & INT'L L. 329 (1995). In this instance, collective forcible intervention may be meant to avert deadly conflict (Haiti and Sierra Leone), or restore democracy in a "collapsed state" (Somalia). The United Nations' threat of force against the junta in Haiti may have prevented violent conflict between pro-Aristide supporters and the military junta. Similarly, ECOMOG action in Sierra Leone appears to have prevented internal deadly conflict between the civilian population and military junta. Nevertheless, it can be argued that this criterion falls outside the scope of humanitarian intervention, and may be better associated with the doctrine of self-determination. However, the humanitarian crises that stem from such circumstances propels it into the humanitarian intervention theatre. See Reisman, *supra* note 4, at 794.

19. These criteria are only concerned with the "substantive basis" justifying "entry" into a sovereign state. For other sources enumerating substantive and "procedural" criteria, see Richard B. Lillich, *Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives*, in LAW AND CIVIL WAR IN THE MODERN WORLD 229, 248 (John Norton Moore ed. 1974); Richard B. Lillich, *Forcible Self-Help by States to Protect Human Rights*, 53 IOWA L. REV. 325, 346-51 (1967); Richard B. Lillich *Intervention to Protect Human Rights*, 15 MCGILL L.J. 204, 218 (1969); John Norton Moore, *The Control*

tant to note that these criteria should be seen as specific guidelines rather than rigid rules and, as the cases of Sierra Leone and the CAR demonstrate, current trends in international law and U.N. practice would seem to allow for some flexibility.

This notion is supported by: (1) the United Nations' and states' unprecedented action²⁰ and support for the ECOWAS "peace enforcement activities" in Liberia and presently Sierra Leone;²¹ and (2) recent and bold Chapter VII²² action taken by the Security Council with regard to Iraq,²³ Somalia,²⁴ Yugoslavia,²⁵ Rwanda,²⁶ Haiti,²⁷ and the CAR.²⁸ In order to demon-

of Foreign Intervention in Internal Conflict, 9 VA. J. INT'L L. 205, 264 (1969); Hungdah Chiu, *Communist China's Attitude toward the United Nation: A Legal Analysis*, 62 AM. J. INT'L L. 20, 39-40 (1968).

20. U.N. support for ECOWAS' peace enforcement activities in Liberia is best illustrated in Security Council Resolution 866, which states "that this would be the *first* peace-keeping mission undertaken by the United Nations in cooperation with a peace-keeping mission *already set up by another organization*, in this case" (emphasis added). S.C. Res. 866, U.N. SCOR, 3281st mtg., U.N.Doc. S/RES/866 (1993). The resolution established the United Nations Observer Mission in Liberia (UNOMIL), which co-deployed with ECOMOG.

21. According to Akehurst:

The distinction between U.N. 'enforcement action' and 'peacekeeping' has increasingly become blurred, due to new kinds of operations (often labeled 'second generation peacekeeping' or 'mixed peacekeeping' which may include some enforcement elements). Indeed, the terminology concerning U.N. peacekeeping has recently become rather confusing.

AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW 416, (Peter Malanczuk ed., 1997).

Henceforth, for purposes of this article, "peace enforcement" means proportionate forcible military action, through deployment of forces, to threaten or engage an individual, group, entity or government, to comply with lawful directives as proscribed by international law.

22. Chapter VII Article 39 action refers to "[a]ction with respect to threats to the peace, breaches of the peace, and acts of aggression." U.N. CHARTER art. 39. para. 1. Arguably, the Security Council authorized Chapter VII Article 42 action to varying degrees in each case mentioned below. See *infra* notes 22-27.

23. See S.C. Res. 678, U.N. SCOR, 2963rd. mtg., U.N.Doc. S/RES/678 (1990) (authorizing collective forcible military intervention to propel Iraqi forces from Kuwait); See also S.C. Res. 688, U.N. SCOR, 2982nd mtg., U.N.Doc. S/RES/688 (1991) (calling for an end to Iraqi repression, and insisting that Iraq "allow immediate access by international humanitarian organizations" to provide relief.).

24. See S.C. Res. 767, U.N. SCOR, 3101st. mtg., U.N.Doc. S/RES/767 (1992) (deciding that "the situation in Somalia constitutes a threat to international peace and security."); See also S.C. Res. 794, U.N. SCOR, 3145th mtg., U.N.Doc. S/RES/794 (1992) (authorizing a U.S.-led military force to "use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia.").

25. See S.C. Res. 770, U.N. SCOR, 3106th mtg., U.N.Doc. S/RES/770 (1992) (empowering states "to take nationally or through regional agencies or arrangements all measures necessary to facilitate in coordination with the U.N. the delivery. . . of humanitarian assistance . . . in . . . Bosnia-Herzegovina."); see also S.C. Res 816, U.N. SCOR, 3191st. mtg., U.N.Doc. S/RES/816 (1993) (authorizing member states to take "all necessary measures in the airspace of the Republic of Bosnia and Herzegovina, in the event of

strate when the international community appears to support unilateral humanitarian intervention, the above cases will be discussed; the ECOWAS-Liberian intervention will be discussed in Part II, the United Nations and MISAB interventions in Part III, and the Nigeria and ECOWAS interventions in Sierra Leone in Part IV.

Since ECOWAS is comprised of sixteen sovereign states, and the ECOMOG operations in Liberia and Sierra Leone were supported by the majority of independent states,²⁹ it can be said that the interventions were supported by the *opinio juris* and practice of states. It is the practice of states that create international law. While international organizations such as the United Nations may influence international law, only states may bring it into being. States' practice only exists when there is a consistent pattern of commonality in action among them. For example, both Togo's contribution of forces, and the United States' and Britain's moral and financial support for ECOMOG may demonstrate such a pattern.

I. INTERNATIONAL LEGAL ASPECTS OF HUMANITARIAN INTERVENTION

There is a general consensus among scholars that "international law has

further violation to ensure compliance with the ban on flights.") This resolution authorized the North Atlantic Treaty Organization (NATO) to commence air strikes against Bosnian Serb positions. *See id.*

26. *See* S.C. Res. 929, U.N. SCOR, 3392nd mtg., U.N.Doc. S/RES/929 (1994) (authorizing France to "use all necessary means" to protect and provide humanitarian relief to Rwandan civilians).

27. *See* S.C. Res. 875, U.N. SCOR, 3293rd mtg., U.N.Doc. S/RES/875 (1993) (authorizing member states to take military action to enforce sanctions.); *see also* S.C. Res. 940, U.N. SCOR, 3413th mtg., U.N.Doc.S/RES/940 (1994) (empowering member states "to form a multinational force . . . [and] . . . use all necessary means to facilitate the departure from Haiti of the military leadership.").

28. *See* S.C. Res. 1125, U.N. SCOR, 3808th mtg., U.N.Doc. S/RES/1125 (1997) (authorizing member states participating in MISAB to "ensure the security and freedom of movement of their personnel."); *see also* S.C. Res. 1159, U.N. SCOR, 3867th mtg., U.N.Doc.S/RES/1159 (1998) (establishing a United Nations Mission in the Central African Republic (MINURCA) to primarily assist in maintaining peace, security, stability, law and order, and protecting key installations in Bangui. This marks the second time that the U.N. has co-deployed a peace-keeping force with an operation already underway, Liberia being the first.).

29. Support for ECOWAS was and is evidenced by the actions of independent states, and states action through the United Nations. Interview with Dr. Simon D. Harkin, Head of Pan-African Policy and Resources Staff - British Foreign and Commonwealth Office (June 1998); *see also* U.S. Department of State Office of the Spokesman Press Statement, *Press Statement by James Foley, Deputy Spokesman*, July 24, 1997; *see generally*, Regina C. Brown, Deputy Assistant Secretary of State for African Affairs, Is There Still a Foreign Policy of the U.S. Toward Africa?, at the 39th International Seminar for Diplomats, Salzburg, Austria (Aug. 2, 1996).

long treated internal conflict as a matter of domestic jurisdiction, to be decided solely by the people of the affected state in keeping with their right to order their own affairs as they see fit.”³⁰ Thus, international law does not prohibit revolution, civil war or civil strife, i.e. rebellion,³¹ nor does it authorize them, as there is no legal right of rebellion. It is simply a liberty. Stated differently, international law is neutral on the issue.

“Foreign intervention in internal conflicts is more the rule than the exception.”³² The ECOWAS, U.N., MISAB and Nigerian interventions referred to above evidence this position, demarcating a normative legal shift toward international recognition of a right to unilateral humanitarian intervention by regional actors in internal conflicts.

A. Humanitarian Intervention

The international community seems to agree that states should not be allowed to hide behind the cloak of “sovereignty” or “domestic jurisdiction” when committing grave human rights violations. Further, it seems to condone intervention to avert anarchy when a state has collapsed, or safeguard democracy when a *de jure* government has been violently and illegally dislodged against the volition of its domestic population. In these circumstances, the international community appears to support humanitarian intervention. Certainly, U.N. action since 1990 supports this notion. For example, the United Nations Security Council “has authorized military intervention to end repression of the Kurds in Iraq, famine in Somalia, ethnic cleansing in Bosnia, and genocide in Rwanda. Even the overthrow of the democratic government of Haiti sufficed to prompt the Security Council to authorize military intervention.”³³ In light of the above, Tesón argues:

[I]nternational law today recognizes, as a matter of practice, the legitimacy of collective forcible humanitarian intervention of military measures authorized by the Security Council for the purpose of remedying serious human rights violations. While traditionally the only ground for collective military action has been the need to respond to breaches of the peace, especially aggression, the international community now has accepted a norm that allows collective humanitarian intervention to respond to serious human rights abuses.³⁴

It is debatable whether the international community has accepted a “[norm] that allows for collective humanitarian intervention to alleviate *seri-*

30. Wippman, *supra* note 12, at 435. See U.N. CHARTER, art. 2(4).

31. See Wippman, *supra* note 12, at 435; see also Oscar Schachter, *International Law: The Right of States to Use Armed Force*, 82 MICH. L. REV. 1620, 1641 (1984).

32. Wippman, *supra* note 12, at 436.

33. *Id.* at 462-63 (emphasis added).

34. Tesón, *supra* note 4, at 324.

ous human rights abuses."³⁵ What one country views as "serious" another may not; thus in the legal sense, such a standard is far too ambiguous. In this context, humanitarian intervention should only be justified when responding to human rights abuses that are so grave that they violate the *ius cogens* norms of international law (to persecute, oppress, exterminate, enslave or deport civilian populations).

In the *Barcelona Traction* case in 1970, the International Court of Justice stated that certain basic human rights, such as the protection from genocide, slavery and racial discrimination, are obligations *erga omnes*.³⁶ In addition, referring to Article 19 of the International Law Commission's U.N. Draft Articles on State Responsibility, "a serious breach on a widespread scale of the international obligations of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and apartheid," is an "international crime."³⁷ Likewise, the works of the Nuremberg, Yugoslavian and Rwandan Tribunals evidence that these criteria have been accepted as non-derogable norms of international law.

Further, consistent with ECOWAS action in Liberia and Sierra Leone, MISAB action in the CAR, and U.N. action in Liberia, Somalia, Yugoslavia, Rwanda, Haiti and the CAR, today, when a government collapses or has been violently and illegally dislodged against the will of its domestic population, the international community seems to have accepted a norm that permits unilateral humanitarian intervention to forestall grave human rights abuses, to avert a state's descent into anarchy, and to safeguard democracy.

II. ECOWAS AND HUMANITARIAN INTERVENTION: THE CASE OF LIBERIA

Any contemporary discussion regarding the validity or existence of the customary international law doctrine of humanitarian intervention requires a discussion of the quintessential case of Liberia. The ECOMOG mission in Liberia marks the first time the international community as a whole has supported unilateral humanitarian intervention by a group of states (regional actors) in a purely domestic conflict.

The following sections will provide the historical events which led to the ECOWAS-ECOMOG intervention in 1991; discuss the legality of intervention by ECOWAS-ECOMOG under international law; and determine whether ECOWAS was entitled to invoke a right to humanitarian intervention.

35. *Id.* (emphasis added).

36. See *Barcelona Traction Case* (Belgium v. Spain), 1970 I.C.J. Rep. 3 para. 33-34 (Second Phase).

37. AKEHURST, *supra* note 20, at 59-60.

A. Background

In 1980, Master Sergeant Samuel Kanyon Doe led a successful *coup d'état*³⁸ that ended over 153 years of Americo-Liberian rule. Initially, Doe appeared to have the support of the majority of Liberia's domestic population, who saw him as an agent for progressive change. After taking power, he promised Liberians that a new constitution would be implemented in 1986, ending rule by martial law.³⁹ However, Doe failed to keep his promise, resulting in mass political unrest.

Like most military dictators, Doe was ill-equipped to be head of state. He was an army staff sergeant, not a politician. Not surprisingly, during Doe's reign, the political and economic infrastructure of Liberia rapidly decayed. By 1989, political unrest matured into civil insurrection, leading to an eight-year civil war.⁴⁰

The Liberian Civil War began in 1989, when Charles Taylor,⁴¹ Liberia's current President,⁴² and a group of so-called "dissidents" launched a small scale attack on security personnel in Nimba County (located on the Liberian-Côte d'Ivoire border), and advanced toward the capital city of Monrovia.⁴³ The group led by Taylor came to be known as the National Patriotic Front of Liberia (NPLF). The NPLF grew quickly, as politically disillusioned members of the Mano and Gio ethnic groups joined.⁴⁴ Doe's American-backed regime, known for its violent and repressive military tactics, was crushed by NPLF fighters. As a result, by May 1990, Taylor's NPLF controlled more territory in Liberia than Doe's regime, with the exception of

38. Doe belonged to the Khran ethnic group.

39. Doe relied heavily on Khran support to keep himself in power. He noticeably favored his group, giving them the majority of government posts.

40. By 1996, it is estimated that over 200,000 people perished during the war, leaving 1.2 million people internally displaced. Moreover, it is estimated that over 750,000 people fled the country. Given that Liberia's prewar population was approximately 2.8 million, 14% perished. Comparatively, this would be similar to 37 million American citizens dying. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Report on Human Rights Practices for 1996 (1997).

41. Former Liberian Director-General of the General Services Agency (GSA) under Doe's regime who, after having been charged with embezzlement in Liberia, fled to the U.S., only to be arrested in Massachusetts. While awaiting extradition to Liberia, he escaped from jail. See Interview by Baffour Ankomah, Chief Editor of *New African*; see also Interview with Charles Taylor, President of Liberia, in Gbarnga, Liberia, 1-17 (July 30, 1992).

42. President Charles Taylor was inaugurated on August 2, 1997. See *Final Report of the Secretary-General On The United Nations Observer Mission In Liberia*, 52nd sess., U.N. SCOR, S/1997/712 (1997).

43. See *BBC Monitoring Report, 4 January 1990, Liberia: Curfew in Nimba County Following Alleged Coup, 2 January 1990*, reprinted in 6 REGIONAL PEACE-KEEPING AND INTERNATIONAL ENFORCEMENT: THE LIBERIAN CRISIS 32-33 (M. Weller, ed.) (1994). [hereinafter THE LIBERIAN CRISIS].

44. See THE LIBERIAN CRISIS, *supra* note 43, at xix. Taylor's NPLF included members from the majority of Liberia's ethnic groups.

Monrovia.⁴⁵ Around this time, one of Taylor's senior commanders, Prince Yormie Johnson, broke from the NPLF and formed his own group, the Independent National Patriotic Front of Liberia (INPFL). The INPFL seemingly had no concrete objective other than to wage war against the NPLF and the Government of Liberia. Johnson's split from Taylor was only a minor setback for the NPLF, which continued its campaign.

Doe's American-backed army suffered large losses, as it was defeated in nearly every engagement. Doe, facing certain defeat, made unsuccessful appeals for assistance to the people of Liberia and the U.S. Government. Disgruntled and impaired by the collapse of his government, Doe appealed to ECOWAS to introduce a "[p]eace-keeping force into Liberia to forestall increasing terror and tension"⁴⁶

Since ECOWAS and the Organization of African Unity (OAU) were not able to mediate a peaceful end to the conflict,⁴⁷ on August 7, 1990, the ECOWAS Standing Mediation Committee decided to establish an ECOWAS Cease-fire Monitoring Group (ECOMOG) for Liberia.⁴⁸ ECOWAS created ECOMOG to halt the "wanton destruction of human life and property . . . [and] . . . massive damage . . . being caused by the armed conflict to the stability and survival of the entire Liberian nation."⁴⁹ ECOMOG was mandated to "restor[e] law and order to create the necessary conditions for free and fair elections"⁵⁰ On August 27, 1990, ECOMOG forces landed in Liberia and immediately came under attack by NPLF forces.⁵¹ In response, ECOMOG forces "fought back with mortars, artillery and automatic weapons."⁵²

On August 29, 1990, in an attempt to end pandemonium in Liberia, participants at the National Conference of All Liberian Political Parties, Patriotic Fronts, Interest Groups and Concerned Citizens in Banjul, Gambia created an Interim Government of Liberia and elected Dr. Amos Sawyer as

45. Monrovia is the capital of Liberia. It was named after U.S. President James Monroe.

46. Letter addressed by President Samuel K. Doe to the Chairman and Members of the Ministerial Meeting of the ECOWAS Standing Mediation Committee, 14 July 1990, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 60.

47. See *THE LIBERIAN CRISIS*, *supra* note 43, at 38-39, 57-59, 63, 65 (providing examples of these failed efforts).

48. See *ECOWAS Standing Mediation Committee, Decision A/DEC.1/8/90, on the Cease-fire and Establishment of an ECOWAS Cease-fire Monitoring Group for Liberia, Banjul, Republic of Gambia, 7 August 1990*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 67, 71. The ECOWAS Standing Mediation Committee included representatives from the Gambia, Ghana, Guinea, Nigeria, Sierra Leone, Mali and Togo.

49. *Id.* at 67.

50. *Id.* at 68.

51. See *BBC Monitoring Report, 27 August 1990, Report: ECOMOG Force Lands; Met by Prince Johnson; Clash with NPLF, 24 August 1990*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 87.

52. *Id.*

Interim President.⁵³ Participants at the conference stated that they created the new government because of the "total breakdown of law and order, the prevailing state of war, the massive loss of life, the displacement of the citizens, and the collapse of the government of President Samuel K. Doe."⁵⁴

Charles Taylor's NPLF refused to attend the Banjul Conference, and did not recognize the Interim Government.⁵⁵ On September 9, 1990, approximately one week after the "Peace Conference," Prince Johnson's guerrillas ambushed and kidnapped Doe at the ECOWAS headquarters in Monrovia, and murdered him at the NPLF's Caldwell Base in the Barclay center.⁵⁶

B. ECOWAS-ECOMOG and the Legality of Intervention

This section will discuss the legality of the ECOWAS intervention in Liberia. Specifically, it will concentrate on the validity of the intervention under customary international law and the *post de jure* authentication of the operation by the United Nations Security Council.

If it can be shown that ECOWAS' "purpose" for intervention was to support Doe's regime, the intervention would be deemed illegal under cus-

53. See *Interim Government of National Unity of Liberia, Final Communiqué of the National Conference of All Liberian Parties, Patriotic Fronts, Interest Groups and Concerned Citizens, Banjul, Republic of Gambia, 29 August 1990*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 89. However, it cannot be said that the "interim government" was the *de jure* government of Liberia because the "*de facto*" ruler of Liberia (Charles Taylor) did not recognize the "new government," and at this juncture, nor did the international community. Moreover, Taylor did not allow the interim government to function as a central authority. See *United States State Department, Regular Briefing by Richard Boucher, 11 September, 1990*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 95; *Report: Taylor Condemns "Foreign Mercenaries"; Banjul Decision on Interim Rule, 2 September, 1990*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 94.

54. *Interim Government of National Unity of Liberia, Final Communiqué of the National Conference of All Liberian Parties, Patriotic Fronts, Interest Groups and Concerned Citizens, Banjul, Republic of Gambia, 29 August 1990*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 89. The Conference participants were as follows: the Liberia Action Party, Liberian People's Party, Unity Party, United Peoples Party, Liberia Unification Party, National Democratic Party of Liberia, Independent National Patriotic Front of Liberia, Liberian Professional Business Association, Press Union of Liberia, Bong County Associations in the Americas, Union of Liberian Artists and Concerned Women of Liberia, Higher Education Association, United Nimba Citizens Council, Association for Constitutional Democracy in Liberia, Concerned Citizens, Front for Popular Democracy and Inter-Faith Mediation Committee of Liberia. See *id.*

55. See *BBC Monitoring Report, 31 August 1990, Taylor Refuses to Attend Banjul Meeting; Johnson Delegation, 29 August 1990*, reprinted in *THE LIBERIAN CRISIS* *supra* note, 43 at 88, 95.

56. See *BBC Monitoring Report, 11 September 1990, Report: President Samuel Doe Wounded and Captured by Prince Johnson's Forces 9 September 1990*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 97; *BBC Monitoring Report, 13 September 1990, Report: Reaction to Reported Death of President Doe, 11 September 1990*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 98.

tomary international law.⁵⁷ Under international law, regional actors are limited, as they may not possess any powers beyond those of their member states. Hence, a regional actor may not intervene in any conflict that its member states would be forbidden to enter. On this point Oscar Schachter remarks,

[n]o state today would deny the basic principle that the people of a nation have the right, under international law, to decide for themselves what kind of government they want, and that this includes the right to revolt and to carry on armed conflict between competing groups. For a foreign state [or regional actor] to support, with Force one side or the other in an internal conflict, is to deprive the people in some measure of the right to decide the issue by themselves. It is, in terms of article 2(4), a use of force against the political independence of the state engaged in civil war.⁵⁸

Presently, there is little evidence to show that ECOWAS "intended" to militarily support Doe's "regime."⁵⁹ Had the ECOWAS leadership wanted to kill Taylor, there was ample opportunity. Unlike Western advisors in the Congo, ECOMOG activities in Liberia seemed legitimate.⁶⁰ Perhaps, the fact that Charles Taylor is currently President of Liberia best evidences this assertion. Hence, arguing that the ECOWAS intervention was credible and objective, Wippman states:

Nigeria did not simply impose its will on Liberia. It did not intervene unilaterally, or at a point when Doe's regime might still have been salvageable. More importantly, Nigeria has frequently had to compromise on ECOMOG's goals and tactics in order to maintain a consensus within ECOWAS for continued involvement within Liberia. *But for this need to compromise, ECOMOG might well have overrun Taylor's forces in August 1990.* Indeed, many of the fits and starts of the ECOWAS approach to Liberia - the on again, off again economic sanctions and the repeated efforts to accommodate Taylor despite his string of broken promises - demonstrate that ECOMOG had indeed been a Community enterprise.⁶¹

Once the situation in Liberia deteriorated to a point where mediation efforts were fruitless, "[s]enior Liberian politicians and interests groups . . . openly called for U.S. marines to stop the fighting,"⁶² however, it was to no

57. See Richard A. Falk, *International law and the United States Role in the Vietnam War*, 75 YALE L. J. 1122, 1127 (1966).

58. Schachter, *supra* note 31, at 1641.

59. See Wippman, *supra* note 4, at 192. However, it is true that between 1989-90, "Nigeria" (not ECOWAS) provided political, economic and military supplies to Doe's regime.

60. See *id.*

61. *Id.* (emphasis added). Perchance, Nigeria's commitment to consensus can serve as an example for other countries, specifically the United States, who over time have demonstrated an uncanny ability to repudiate the will of the international community by taking unilateral enforcement action.

62. *Id.* at 164-65.

avail.⁶³ The United States viewed the Liberian conflict as an internal affair, to be solved by Liberians themselves.⁶⁴ Certainly, the United States did not use an internal affairs test when it intervened in the internal conflicts in the Philippines, Nicaragua, Panama, Iraq, Yugoslavia, Somalia and Haiti, albeit the latter two with U.N. authorization. Apparently, Liberia's foreign policy stock devalued in the post-Cold War era. Yet, according to Herman J. Cohen, former U.S. Assistant Secretary of State for African Affairs, between 1980 and 1990, Doe's regime received \$67 million in military assistance from the U.S. government, not including an estimated \$1.5 million for the fiscal year 1991.⁶⁵

Initially, like the United States, the United Nations did not intervene in the Liberian conflict. Wippman states that this was partly due to opposition by Côte d'Ivoire, which was sympathetic to Taylor, and Ethiopia and Zaire, which did not want to set an "intrusive" precedent.⁶⁶ As history has shown, had the West favored intervention, those in opposition would have submitted. Only after the United States denied assistance and the United Nations failed to respond in a timely fashion did ECOWAS take it upon itself to intervene.⁶⁷

Humanitarian justifications aside, nowhere in the U.N. Charter does it state that a regional agency may forcibly intervene in an internal conflict if the United Nations does not.⁶⁸ According to Chapter VIII Article 53 of the U.N. Charter, "no enforcement action shall be taken under regional arrangements or by regional agencies without authorization of the Security Council . . ."⁶⁹ Clearly, ECOWAS did not obtain authorization from the United Nations before it intervened in Liberia.⁷⁰ Therefore, unless ECOWAS could justify intervention on some other legal basis, the intervention would appear to have been unlawful.

In order for a regional actor to take military enforcement action, it must be empowered to do so by its organizing instrument or subsequent protocol or treaty.⁷¹ The ECOWAS Treaty of 1975 did not provide for a regional security mechanism to deal with "purely" internal conflicts.⁷² Moreover, nei-

63. However, the U.S. did evacuate American and foreign personnel from Liberia. See *BBC Monitoring Report, 31 July 1990*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 63; *BBC Monitoring Report, 5 August 1990* reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 65; *BBC Monitoring Report, 20 August 1990* reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 85.

64. See *Statement of Hon. Herman J. Cohen, Assistant Secretary of State, Bureau of African Affairs*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 46.

65. See *id.* at 48-49.

66. See Wippman, *supra* note 4, at 165.

67. See *id.* at 165.

68. See U.N. CHARTER, *supra* note 22.

69. *Id.* art. 53, para. 1, at 26.

70. See *id.*

71. See *id.*

72. See generally *THE LIBERIAN CRISIS*, *supra* note 43.

ther the ECOWAS Protocol on Non-Aggression,⁷³ nor the ECOWAS Protocol relating to Mutual Assistance on Defense,⁷⁴ empowers ECOWAS to take enforcement action in purely internal conflicts (conflicts which do not enjoy external assistance). Therefore, unless it can be shown that ECOWAS validly invoked a right to humanitarian intervention, the intervention must be deemed unlawful, since there appears to have been no legal basis for the intervention under international law.

Although there was no legal basis for the ECOWAS intervention under the U.N. Charter, it was supported by the United Nations and the whole of the international community. In fact, “[b]etween 22 January 1991 and 27 November 1996, the Council adopted fifteen resolutions directly relating to the situation in Liberia, in addition, the President of the Security Council issued nine statements in this connection.”⁷⁵ In virtually every resolution and statement, the United Nations commended ECOWAS for its efforts, not once making reference to ECOMOG’s “offensive” use of force; in effect, this tacitly legitimized such force. On November 19, 1992, the Security Council adopted Resolution 788, calling for a complete weapons embargo against Liberia. The embargo did not apply to ECOWAS. Ten months later, on September 22, 1993, the Security Council adopted Resolution 866 which called for the creation of the United Nations Observer Mission in Liberia (UNOMIL), and stated “that this would be the first peace-keeping mission undertaken by the United Nations in cooperation with a peace-keeping mission already set up by another organization, in this case ECOWAS.”⁷⁶ Hence, it can be said that Resolutions 788 and 866 placed a *retroactive de jure seal* on the ECOWAS intervention.

C. ECOWAS-ECOMOG and “Humanitarian Intervention”

This section will discuss the relevant substantive legal issues which arise when examining the legality of external intervention by states in the domes-

73. See *ECOWAS Protocol on Non-Aggression, 22 April 1978*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 18 (calling on member states to “refrain from committing, encouraging or condoning acts of subversion, hostility or aggression against . . . other Member States.” Also calls on member states to prevent foreigners and non-resident foreigners from committing or using member state territory to commit acts of aggression against the sovereignty of Community Members. Likewise, it states that disputes which can not be settled peacefully should be referred to the authority of heads of state and government.)

74. See *ECOWAS Protocol Relating to Mutual Assistance on Defence, 29 May 1981*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 19. The Protocol calls on Member States to give mutual aid and assistance for defense against armed threat or aggression, and that any armed threat or aggression against any member is one against the entire Community. Moreover, it states that, internal armed conflict in any state *supported by outside forces*, likely to endanger security and peace in the community, will be dealt with by the authority of the member states concerned.

75. *The United Nations and the Situation in Liberia*, U.N.Doc. [ST/] DPI/1668, 52nd sess., at 35 (1997).

76. *Id.* at 41.

tic conflicts of other states.

On July 14, 1990, in a letter to the Chairman of the Ministerial Meeting of the ECOWAS Standing Mediation Committee, Doe suggested that "it would seem most *expedient* at this time to introduce an ECOWAS Peace-keeping Force into Liberia to *forestall* increasing terror and tension and to *assure a peaceful transitional environment*."⁷⁷ On its face, Doe's letter appears to have been a valid request by a *de jure* government for assistance, justifying the introduction of a peace-keeping force by ECOWAS in Liberia. Unfortunately, the situation was not that simple. By the time Doe requested ECOWAS assistance, his government had collapsed. With the exception of Monrovia, the NPLF controlled nearly all of Liberia.⁷⁸ Foreign governments, news agencies, and apparently Doe himself seemed convinced that Taylor's NPLF would inevitably win the war,⁷⁹ and by July 14, 1990, it was clear that he had. Only ECOWAS and the Organization of African Unity negotiation attempts forestalled a final NPLF assault on Monrovia.

Since Doe was no longer considered the legitimate head of state by the Liberian people,⁸⁰ and considering that the government itself had collapsed,⁸¹ can it really be said that Doe possessed the legal authority to request assistance on behalf of the Republic of Liberia? The answer is no. Under international law, if a *de jure* government loses *de facto* control of the state, until it regains control, it forfeits its autonomous legal standing.⁸² On this issue, Louise Doswald-Beck comments,

that a regime may only be legally entitled to invite outside military help if it is a government within the meaning of the international law, and must therefore be in *de facto* control. If, on the other hand, it needs to request assistance to quell an insurrection, i.e. a rebel-

77. Letter addressed by President Samuel K. Doe to the Chairman and Members of the Ministerial Meeting of the ECOWAS Standing Mediation Committee, 14 July 1990, reprinted in THE LIBERIAN CRISIS, *supra* note 43, at 60. (emphasis added).

78. Doe's forces were outnumbered at least five to one. By July 1990, it was estimated that Doe had only 1000 troops, all of which were stationed in Monrovia for a final stand off with NPLF forces. See U.S. House of Representatives, Subcommittee on Africa of the Committee on Foreign Affairs, 101st Congress, 2nd Session, Hearing on U.S. Policy and the Crisis in Liberia, 26 June 1990, reprinted in THE LIBERIAN CRISIS, *supra* note 43, at 47.

79. See *id.* at 43-55.

80. See BBC Monitoring Report: 26 June 1990, *Liberian Demonstrators and Opposition Parties Say Doe Must Go*, reprinted in THE LIBERIAN CRISIS, *supra* note 43, at 57.

81. See Wippman, *supra* note 4, at 182 (stating that then Organization of African Unity Chairman, President Museveni of Uganda, and President Mugabe of Zimbabwe announced that the Government of Liberia had collapsed). Furthermore, if Doe's regime was still operable, why did participants at the "National Conference of All Liberian Political Parties, Patriotic Fronts, Interest Groups and Concerned Citizens," declare that there "[was] no government in Liberia?" *Interim Government of National Unity of Liberia, Final Communique of the National Conference of All Liberian Political Parties, Patriotic Fronts, Interest Groups and Concerned Citizens, 19 August 1990*, reprinted in THE LIBERIAN CRISIS, *supra* note 43, at 89 (emphasis added).

82. See Louise Doswald-Beck, *The Legal Validity of Military Intervention by Invitation of the Government*, 1985 BRIT. Y. B. INT'L L. 189, 195-96 (1985).

lion of some magnitude, it is by definition not in *de facto* control and thus cannot speak for the state.⁸³

Hence, as Taylor's forces took control of "greater" Liberia, Doe's government and military crumbled, in effect making Taylor the only *de facto* ruler. As a result, no individual had legal standing to represent the state as a whole. Nevertheless, according to Doswald-Beck, the "existence of *de facto* control is generally the most important criterion in dealing with a regime as representing the state."⁸⁴ That being the case, in order for the ECOMOG operation to have qualified as a lawful "peace-keeping" mission, ECOWAS would have needed to obtain Taylor's consent prior to intervention. Moreover, despite claims to the contrary, Sawyer could not have consented to intervention because he was not elected interim president of Liberia until five days after the intervention took place. Furthermore, the interim government was not created until August 29, 1990, approximately one week *before* the death of Doe. Therefore, Sawyer did not possess the legal authority to authorize intervention, as Doe was still considered the *de jure* Head of State.

By July 1990, Doe's regime had completely collapsed. By late August 1990, Liberia seems to have had three leaders, as Taylor, Doe, and Sawyer claimed to be head of state. Still, Doe's regime would have to be considered more legally valid than Sawyer's new government. Sawyer's interim government lacked *de jure* status for four primary reasons: (1) Doe was still alive; (2) at this stage, Sawyer's interim government did not control any territory in Liberia; (3) the interim government was not yet recognized by the international community, and (4) it is unclear whether the election of the interim government was lawful under the Constitution of the Republic of Liberia.

Surely, in the legal sense, referring to the Banjul Conference, political acquiescence by various political entities and elites would not suffice to create a *de jure* government. Nor would it negate claims by Taylor (the *de facto* ruler) to be President of Liberia.⁸⁵ By late July 1990, since Taylor was the only *de facto* ruler, he appears to have been the only domestic authority entitled to authorize intervention. At the very least, ECOWAS needed to obtain Taylor's consent prior to intervention. It is a well established fact that it did not.

Under international law, a government may request foreign assistance to thwart internal disorder or restore rule. However, as previously stated, international law does not permit intervention to quash civil war. Once conflict has exploded into violent civil war, foreign intervention on behalf of either party is illegal.⁸⁶ Thus, in the Liberian case, if it can be shown that inter-

83. *Id.*

84. *Id.* at 194.

85. Due to the vast amount of territory that Taylor controlled, he appeared to be the only *de facto* leader. By 27 July 1990 Taylor "claimed" to be the President of Liberia. See *BBC Monitoring Report: Doe Government "Dissolved," Charles Taylor Leads New Government, 30 July 1990*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 62-63.

86. See Falk, *supra* note 57, at 1127; see also Schachter, *supra* note 31, at 1641-45.

vention was based solely on Doe's consent, the intervention would have to be deemed illegal, since it would have assisted Doe and averted the NPLF's (Liberian people's) right to self-determination.⁸⁷ Nonetheless, there does not appear to be any substantive evidence showing that ECOWAS relied on Doe's letter as a basis for intervention, or that ECOWAS intervened to support Doe's regime. Likewise, not one decision or resolution of the ECOWAS Standing Mediation Committee makes mention of Doe's letter.⁸⁸ This suggests that Doe's request was a minor factor in the ECOWAS decision to intervene.

Although intervention appears to have been based on humanitarian grounds, ECOWAS leaders were keenly aware that peace would have to be obtained by force.⁸⁹ Upon landing in Liberia, on August 24, 1990, ECOMOG troops came under fierce attack by NPLF forces.⁹⁰ In self-defense, ECOMOG forces retaliated with "mortars, artillery and automatic weapons."⁹¹ By September 17, 1990, approximately one week after the assassination of Doe, fighting escalated between the NPLF, the IPLF and ECOMOG.⁹² In an attempt to prevent Taylor from taking Monrovia, ECOMOG launched offensive missile attacks by land and air against the NPLF.⁹³ At times, ECOMOG seemed less like a "peace-making force" and more like an unintended party to the conflict. Notwithstanding, ECOMOG action must be viewed in light of its mandate to stop the war and restore law and order.

ECOWAS seems to have validly invoked a right to humanitarian intervention because the *de jure* government of Liberia collapsed, causing the state to slide into anarchy, which resulted in death and suffering on a grand scale. Moreover, the intervention marked the first time that unilateral hu-

87. See Schachter, *supra* note 31, at 1641-42.

88. On the contrary, the *ECOWAS Standing Mediation Committee Decision A/DEC.1/8/90*, states purely humanitarian reasons for establishing ECOMOG. *ECOWAS Standing Mediation Committee Decision A/DEC.1/8/90, on the Cease-fire and Establishment of an ECOWAS Cease-fire Monitoring Group for Liberia, Banjul, Republic of Gambia*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 67; see *ECOWAS Standing Mediation Committee, Banjul, Republic of Gambia, Final Communique of the First Session, 7 August 1990*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 73 (justifying the establishment of ECOMOG on humanitarian grounds.).

89. See Wippman, *supra* note 4, at 167.

90. See *BBC Monitoring Report, 27 August 1990, Report: ECOMOG Force Lands; Met by Prince Johnson; Clash with NPLF, 24 August 1990*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 87.

91. *Id.* Such humanitarian actions are hardly of your peace-keeping variety.

92. See *BBC Monitoring Report, 18 September 1990, Report: ECOMOG on Offensive Against Taylor* reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 99; "Violent Fighting" in *Monrovia, 16 Sept. 1990*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 99.

93. See *BBC Monitoring Report, 19 September 1990, Report: Military Solution Sought; Nigeria, Ghana to Send ECOMOG Reinforcements 17 September 1990*, reprinted in *THE LIBERIAN CRISIS*, *supra* note 43, at 99. ECOMOG intensified its peace-enforcement activities after Doe's death. See *id.*

manitarian intervention by a group of states (regional actors) in a purely internal matter was supported by the whole of the international community, and the first time the United Nations co-deployed with another organization already in the field.⁹⁴ Commenting on the ECOWAS intervention, Wippman remarks, "[t]he legitimacy of humanitarian intervention under international law is, of course, much debated. But for those who believe it is or should be considered lawful, the ECOWAS intervention in Liberia satisfies virtually every proposed test, and in many respects constitutes an excellent model."⁹⁵

In retrospect, considering the international community's response to the MISAB intervention in the CAR, and the ECOWAS mission in Sierra Leone, it may also be the case that the Liberian intervention generated instant customary international law or "*diritto spontaneo*," namely, that unilateral humanitarian intervention by groups of states in domestic conflicts is lawful.⁹⁶

III. THE UNITED NATIONS AND HUMANITARIAN INTERVENTION IN IRAQ, SOMALIA, YUGOSLAVIA, RWANDA HAITI AND THE CENTRAL AFRICAN REPUBLIC: EXPANDING THE CRITERIA FOR INTERVENTION?

Since 1990,⁹⁷ the United Nations has engaged in more peace-keeping activities than at any other time in the organization's history.⁹⁸ Although the following case studies derive their legal basis from the U.N. Charter and not customary international law,⁹⁹ they sequentially demarcate new trends in international law and U.N. practice. Furthermore, all six interventions occurred during the Liberian Civil War and prior to the ECOWAS intervention in Sierra Leone. In order to properly assess new trends which have developed with regard to the validity of forcible military intervention in states for humanitarian ends, it is necessary to examine the following case studies chronologically (Iraq 1991, Somalia 1992, Yugoslavia 1992, Rwanda 1993, Haiti 1993, and the CAR 1997). These cases offer valuable insight into when the international community is willing to condone the puncturing of

94. See S.C. Res. 866, U.N. SCOR, 48th Sess. para. 5, U.N. Doc. S/INF/49 (1993).

95. Wippman, *supra* note 4, at 179.

96. See *North Sea Continental Shelf Cases* (FRG v. Denmark and IRC v. Netherlands), 1969 I.C.J. Rep. at 3, 4; Bin Cheng, *United Nations Resolutions on Outer Space: "Instant" International Customary Law?*, 5 INDIAN J. INT'L L. 23 (1965); P. Malanczuk, *Space Law as a Branch of International Law*, 25 NETH. INT'L L. REV. 143, 160-61 (1994).

97. Ironically, during the eight year (1989-1997) civil war in Liberia, the United Nations engaged in "peace-enforcement" activities in Iraq, Somalia, Yugoslavia, Rwanda and Haiti.

98. The character and nature of such missions have also changed. The United Nations appears more willing to use "force" as a means to obtain compliance with its mandates.

99. Except for the CAR which derived its legal basis for customary international law and the U.N. Charter. The Security Council passed several resolutions with regard to the CAR crises.

states' sovereignty for humanitarian ends. As a result, it can be argued that the Security Council has been used as a mechanism to legitimize humanitarian intervention.

A. Iraq

Two major issues arise with regard to the United States' and coalition forces' military enforcement action in Iraq under a stretched interpretation of Security Council Resolution 688. The first issue is whether unilateral military action by the United States and allied forces amounted to humanitarian intervention and the second is whether the Security Council would have been justified in authorizing the use of force in Iraq.

Whether or not Iraq's ruthless attacks upon its Kurdish people in Northern Iraq amounted to a breach of the *jus cogens* norms of international law as defined by Nuremberg is debatable. If commentators agree that it was, then perhaps intervention by the United States and coalition forces was justified on humanitarian grounds. However, this assertion is difficult to make because the United States, which led the assault, interpreted Security Council Resolution 688 to authorize it to take military enforcement action. However, nowhere in the resolution does it authorize the use of force against Iraq.¹⁰⁰ On the contrary, it reaffirms "the commitment of all Member States to the sovereignty, territorial integrity and political independence of Iraq and of all States in the area . . ."¹⁰¹ Moreover, the resolution "demanded" and "insisted" that Iraq "immediately end this repression and express[ed] the hope in the same context that an open dialog [would] take place to ensure that the human and political rights of all Iraqi citizens are respected."¹⁰² This evidences the United Nations' preference for diplomacy over military force in an attempt to obtain a cessation of Iraqi repression. Even the most cursory glance at Resolution 688 reveals that intervention by the U.S. and allied forces was not endorsed by the United Nations.¹⁰³ Former U.N. Secretary-General Javier Perez de Cuellar asserted that the intervention was legally problematic and therefore disapproved of it.¹⁰⁴ Since the Security Council did not adopt a resolution authorizing the United States and allied forces to use force against Iraq, the intervention had no legal basis under the U.N. Charter and could be seen as a violation of Article 2(4) of the Charter.¹⁰⁵

Although there does not appear to be any legal basis for the interven-

100. See S.C. Res. 688, U.N. SCOR, 2982nd mtg., U.N.Doc. S/RES/688 (1991).

101. *Id.*

102. *Id.*

103. Secretary-General Javier Perez de Cuellar indicated that intervention was legally problematic, and seemed against intervention. See Stephen Robinson, *The Middle East: Bush and U.N. Chief Clash Over Legality of Military Move*, THE DAILY TELEGRAPH, Apr. 18, 1991, at 10.

104. See *id.*

105. See *id.*

tion, the United States and its allies may have been entitled to invoke a right to humanitarian intervention.¹⁰⁶ The United States did not obtain Iraq's consent prior to intervention; rather it justified intervention on humanitarian grounds (namely to avert further human rights violations by Iraq against the Kurds) and seemingly used proportionate military force to achieve its objective.¹⁰⁷ However, at no time did the United States or allied forces claim a right to humanitarian intervention. Even if they had, as previously stated, it is questionable whether Iraq's nefarious acts toward the Kurds were egregious enough to justify puncturing its sovereignty. Furthermore, it would be difficult to classify "unprovoked" air strikes as a form of humanitarian intervention, as the doctrine seems to call for some type of ground presence in the target state. Therefore, if the United States and allied forces had claimed a right to humanitarian intervention, their assertion would have appeared insupportable. Perhaps this explains the absence of such a claim.

However, it must be noted that the United States' action in Iraq could be seen "partly in the special context of post-war actions by victors in the territory of defeated adversaries."¹⁰⁸ However, for this to have been the case, it must be shown that Iraq breached an agreement which delineated intervention as a consequence of the breach. No such agreement has been cited.

Since there appears to be no consensus as to the legal validity or justification for U.S. intervention in Iraq, it would seem unlikely that the U.S.'s action would set a precedent. On the other hand, in certain instances it may signify the international community's willingness to condone forcible military action by the United Nations or states, even if such action appears to have no legal basis under the U.N. Charter or customary international law, regardless of whether a formal attestation to humanitarian intervention has been made. Or, it may simply be that the international community is not prepared to hold the Great Powers accountable for acting unlawfully. Whatever the case may be, U.S. and allied action in Iraq would seem to qualify as some form of unilateral humanitarian action, not intervention.

B. Somalia

Although U.N. action in Somalia was a clear case of humanitarian intervention,¹⁰⁹ some commentators disagree with this assertion.¹¹⁰ In essence,

106. See Tesón, *supra* note 4, at 343-48.

107. Nevertheless, American conduct in Iraq would seem to qualify as "humanitarian action," not intervention.

108. Adam Roberts, *Humanitarian Action in War: Aid, protection and impartiality in a policy vacuum*, 305 ADELPHI PAPERS 7, 22 (1996).

109. According to Professor James Mayall, "[f]or the first time, statelessness was acknowledged to be a threat to an international society composed of sovereign states." JAMES MAYALL, *THE NEW INTERVENTIONISM 1991-1994 UNITED NATIONS EXPERIENCE IN CAMBODIA, FORMER YUGOSLAVIA AND SOMALIA* 14 (James Mayall & Joan Lewis, eds.) (1996).

110. See Roberts, *supra* note 108, at 22.

they argue that "there was no Somali government to give or refuse consent, so the intervention by the Unified Task Force (UNITAF) . . . and its continuation by the United Nations Operation in Somalia (UNOSCOM II) . . . was hardly a classic case of humanitarian intervention."¹¹¹ Such an argument is contradictory. If one accepts the contention that intervention without consent is a decisive criterion for action to qualify as humanitarian intervention, it would seem illogical to argue that a legal central authority must exist to not give consent in order for humanitarian intervention to be valid.¹¹² If this were the case, a group of states, a regional actor, or the United Nations would never be able to legally invoke a right to humanitarian intervention once a government has collapsed or withered into a state of anarchy. The Somalia case reveals that when the *de jure* government of a state dissolves and nothing takes its place (except wide spread civil war or anarchy), what exists is a "collapsed state."¹¹³ Typically, collapsed states cannot give consent because such states do not have an operable central authority. Thus, unless commentators are willing to argue that the existence of a central authority is an obligatory prerequisite for military intervention in a state to qualify as humanitarian intervention, arguments which maintain that a government must exist to give or refuse consent would appear to be fruitless. Moreover, customary international law does not support such an assertion.

The events in Somalia were unprecedented because "the United Nations Operation in Somalia (UNOSOM I and II) and the United Nations-sanctioned and United States-led Unified Task Force (UNITAF) represented one of the rare cases in which an international military force was deployed in large measure to deal with a humanitarian crisis."¹¹⁴ Likewise, "[t]his was the first time that an unambiguously internal and humanitarian crisis had been designated as a threat to international peace and security, thus justifying peace enforcement measures."¹¹⁵ Moreover, another precedential aspect of U.N. action in Somalia was UNOSOM II's broad mandate

111. *Id.*

112. See U.N. CHARTER, art. 2, para. 7. (stating that the Security Council does not need consent when it takes enforcement action under Chapter VII of the Charter).

113. See Francis Mading Deng, *State Collapse: The Humanitarian Challenge to the United Nations*, in COLLAPSED STATES: THE DISINTEGRATION AND RESTORATION OF LEGITIMATE AUTHORITY 207 (I. William Zartman, ed., 1995).

114. 3 THE UNITED NATIONS BLUE BOOK SERIES, THE UNITED NATIONS AND SOMALIA 1992-1996, at 3 (1996). UNOSOM I was created by Security Council Resolution 751 (1992), to monitor the cease-fire in Mogadishu and protect humanitarian workers. Pursuant to Security Council 794 (1992), the U.S.-led UNITAF was created, authorizing Member States to use all necessary means to establish a secure environment for humanitarian operations. UNOSOM II was created by Security Council Resolution 814 (1993), which acting pursuant to Resolution 794 (1992), was to replace UNITAF and consolidate, expand, and maintain a secure environment throughout Somalia. See S.C. Res. 814, U.N. SCOR, 3188th. mtg., U.N.Doc. S/RES/814 (1993); S.C. Res. 794, U.N. SCOR, 3145th. mtg., U.N.Doc. S/RES/794(1992).

115. MAYALL, *supra* note 109, at 94.

to help the Somalis create democratic institutions, i.e. rebuild their state.¹¹⁶ UNOSOM II's broad mandate appears more liberal than Security Council Resolution 940, calling for the forced removal of Haiti's military junta and the restoration of democracy.

The case of Somalia evidences that the international community appears to support unilateral humanitarian intervention by groups of states or regional actors when states collapse and descend into anarchy due to civil war.

C. Yugoslavia

The United Nations acted on the request of the Yugoslav government when it interceded in the former Yugoslavia.¹¹⁷ The character of the forces deployed comported with that of traditional U.N. peace-keeping missions, as they were deployed pursuant to a cease-fire and were not mandated to use force. However, as the conflict escalated, the United Nations seemed willing to take all necessary measures to bring peace and security to Yugoslavia, including an extension and enlargement of the U.N. Protection Force (UNPROFOR) to insure delivery of humanitarian assistance.¹¹⁸ In July 1992, after passing several resolutions condemning Serb aggression, ships from the North Atlantic Treaty Organization (NATO) and Western European Union began monitoring compliance with Security Council Resolution 713 and Security Council Resolution 757;¹¹⁹ nonetheless Serb hostilities continued unabated.

As a result, the Security Council adopted numerous additional resolutions which forestalled Serb aggression and hostility toward Bosnian Muslims and UNPROFOR personnel. According to Captain Davis L. Brown of the United States Air Force, the resolutions justified NATO air strikes against Serbian missile sites and ground radars, and at times advancing or hostile Serbian ground units. NATO flew more than 23,000 sorties in this regard.¹²⁰ The most notable was Security Council Resolution 836, which ac-

116. See S.C.Res. 814, U.N. SCOR, 3188th mtg., U.N.Doc. S/RES/814 (1993).

117. See S.C.Res. 721, U.N. SCOR, 3018th mtg., U.N.Doc. S/RES/721 (1991).

118. See S.C.Res. 743, U.N. SCOR, 3055th mtg., U.N.Doc. S/RES/743 (1992) (establishing and authorizing the deployment of the U.N. Protection Force (UNPROFOR) in Yugoslavia.); see S.C. Res. 758, U.N. SCOR, 3083rd mtg., U.N.Doc. S/RES/758 (1992); S.C. Res. 761, U.N. SCOR, 3087th mtg., U.N.Doc. S/RES/761 (1992); S.C. Res. 770, U.N. SCOR, 3016th mtg., U.N.Doc. S/RES/770 (1992). After the Security Council authorized the UNPROFOR, it was understood that the United Nations may extend the mandate of UNPROFOR, with or without the consent of the government. See Roberts, *supra* note 108, at 22. Subsequent resolutions suggested that if UNPROFOR's humanitarian activities were interfered with, measures not based on consent of the Yugoslavian government could be taken to fulfill the United Nations' humanitarian mandate. See *id.*

119. See Brown, *supra* note 4, at 260-65 (containing a detailed analysis of NATO action in Yugoslavia).

120. See generally S.C. Res. 807, U.N. SCOR, 3174th mtg., U.N.Doc. S/RES/807 (1993); S.C. Res. 824, U.N. SCOR, 3208th mtg., U.N.Doc. S/RES/824 (1993); S.C. Res.

ording to Captain Brown, compelled NATO to take "offensive action" in the form of air strikes against Bosnian Serb headquarters in Pale.¹²¹

Hence, similar to the interventions in Iraq and Somalia, U.N. action in Yugoslavia demonstrates that the international community is willing to condone the use of force to prevent mass killing and combat tyranny.¹²²

D. Rwanda

U.N. peace-keeping activities in Rwanda date back to October 5, 1993.¹²³ On June 22, 1993, pursuant to requests by both the government of Rwanda and the Rwandese Patriotic Front, the Security Council adopted Resolution 846, establishing the United Nations Observer Mission Uganda-Rwanda to monitor the Uganda-Rwanda border and "ensure that no military assistance reaches Rwanda."¹²⁴ On August 4, 1993 both factions signed a peace agreement in Arusha, Tanzania.¹²⁵ Soon after, the Security Council adopted Resolution 872, authorizing the establishment of a United Nations Assistance Mission for Rwanda (UNAMIR), mandated "to maintain security while the transitional Government [was] being set up"¹²⁶ Despite U.N. efforts, the situation in Rwanda quickly deteriorated, as both sides failed to abide by the terms of the Arusha Accord, namely the cease-fire. The deteriorating situation, taken together with the killings of the presidents of Rwanda and Burundi,¹²⁷ set the stage for violence of catastrophic proportions, which led to the ensuing genocide of Tutsis and moderate Hutus by Hutu extremists.¹²⁸ In order to avoid further casualties, Belgium withdrew its

836, U.N. SCOR, 3228th mtg., U.N.Doc. S/RES/836 (1993); S.C. Res. 913, U.N. SCOR, 3367th mtg., U.N.Doc. S/RES/913 (1994); S.C. Res. 958, U.N. SCOR, 3461st mtg., U.N.Doc. S/RES/958 (1994).

121. See Brown, *supra* note 4, at 264 (arguing that S.C. Res. 836 para. 9 (1993) amounted to "a grant of authority to use offensive force.").

122. See *id.* at 262.

123. However, "serious" ethnic and political conflict between the Rwandan Patriotic Front and Rwandan Government Forces dates back to at least 1 October 1990. See 3 THE UNITED NATIONS BLUE BOOK SERIES, THE UNITED NATIONS AND RWANDA 1993-1996, at 115 (1996). [hereinafter THE UNITED NATIONS AND RWANDA]; see generally GERARD PRUNIER, THE RWANDA CRISIS HISTORY OF A GENOCIDE (1995) (discussing the civil war in Rwanda).

124. THE UNITED NATIONS AND RWANDA, *supra* note 123, at 116. The mission was set up on the Uganda side of the border.

125. See *id.* at 116.

126. *Id.* at 117.

127. On April 6, 1994, while returning from a regional summit in Dar es Salaam, both presidents were killed when their plane was allegedly struck by a land to air missile. As a result, violence raged throughout the country. Later that day, Rwanda's Prime Minister, ten Belgium peace-keepers assigned to protect her, and three Hutu opposition party leaders were brutally murdered by Rwandese Government Army soldiers. See *id.* at 37, 38.

128. Shortly after the plane crashed, members of the Presidential Guard systematically killed hundreds of Tutsis civilians and suspected Hutu moderates. See *id.*

UNAMIR peace-keeping contingent and weaponry.¹²⁹

Due to the escalation of violence, the Security Council adopted Resolution 912, which scaled down UNAMIR's presence in Rwanda.¹³⁰ Consequently, by the end of April 1994, violence reached profound levels. "[M]assacres of civilians were continuing everywhere in Rwanda . . . with some reports estimating that as many as 200,000 people had been killed."¹³¹ Likewise, the U.N. reports that there were over 250,000 displaced persons and approximately 400,000 refugees in Burundi, Uganda, Tanzania and Zaire.¹³² Overwhelmed by the conflict, on May 2, 1994, the Rwandese government requested that the Security Council strengthen UNAMIR's presence in Rwanda.¹³³ On May 17, 1994, the Security Council authorized UNAMIR II, which expanded the mission's force to 5500 troops, to provide security to displaced persons, refugees and civilians.¹³⁴ However, due to a lack of support and logistical equipment needed to make UNAMIR II fully operational and timely, the Secretary General suggested that the Security Council consider France's proposal to create a French-led multi-national force:

In these circumstances, the Security Council may wish to consider the offer of the Government of France to undertake, subject to Security Council authorization, a French-commanded multinational operation in conjunction with other Member States, under Chapter VII of the Charter of the United Nations, to assure the security and protection of displaced persons and civilians at risk in Rwanda. Such an operation was one of the options envisaged in my letter of 29 April (S/1994/518) and precedent exists for it in the United States-led operation Unified Task Force in Somalia (UNITAF) which was deployed in Somalia in December 1992.¹³⁵

Furthermore, the Secretary-General advised the Security Council that if it decided to authorize the plan, member states which have contingents in UNAMIR would be asked to keep such contingents in Rwanda "until UNAMIR is brought up to the necessary strength to take over from the multinational force and the latter has created the conditions in which a peace-keeping force operating under Chapter VII would have the capacity to carry out its mandate."¹³⁶ Consistent with the French and Senegalese plan,¹³⁷ on

129. *See id.* at 40-41.

130. *See id.* at 44.

131. *Id.*

132. *See id.* at 45.

133. *See id.* at 274-75.

134. *See id.* at 282-84.

135. *See Letter dated 19 June 1994 from the Secretary-General to the President of the Security Council, suggesting that the Council consider France's offer to undertake a multinational operation to assure the security and protection of civilians at risk in Rwanda until UNAMIR is brought to strength, in THE UNITED NATIONS AND RWANDA, supra note 123, at 306.*

136. *Id.*

137. *See Letter dated 20 June 1994 from the Permanent Representative of France to the United Nations addressed to the Secretary-General, requesting adoption of a resolution un-*

June 22, 1994 the Security Council adopted Resolution 929.¹³⁸ The resolution is an exemplary illustration of humanitarian intervention authorized by the United Nations. On July 18, 1994, after winning the war, the Rwandese Patriotic Force unilaterally declared a cease-fire ending the civil war.¹³⁹

International responses to the tragic events in Rwanda were poor and shameful. If there was any lesson learned from the case of Rwanda, it is that states are reluctant to put their own national contingents at risk when there is no overwhelming national interest.¹⁴⁰ Nevertheless, U.N. action in Rwanda was still a clear case of humanitarian intervention, as it showed the United Nations' willingness to intervene in internal conflicts to avert genocide. Moreover, it appears that the Security Council may have intended to set a precedent in Somalia and Rwanda and, as a result, will undoubtedly turn to states and regional actors to assist in the maintenance of international peace and security in the future.

E. Haiti

The case of Haiti should be viewed in light of the previously examined interventions. The Security Council has authorized states to halt genocide (Yugoslavia and Rwanda), restore law and order to collapsed states (Somalia and Liberia), protect humanitarian workers and civilians (the Central African Republic and Iraq) and restore democratic institutions (Somalia). Hence, it should come as no surprise that it would also seek to "safeguard" democratic institutions, the absence of which gives rise to violent conflict.

The Haiti intervention was important because it signified the international community's willingness to defend democratic institutions¹⁴¹ by insuring that democracy prevails in states which have been shaken by violent, illegal and unpopular coups (i.e., those which do not enjoy support from the civilian populace).

On December 16, 1990, Jean-Bertrand Aristide was elected President of Haiti. The election was deemed valid and democratic by the Organization of American States, the United Nations and the Caribbean Community.¹⁴²

der Chapter VII of the Charter as a legal framework for the deployment of a multinational force to maintain a presence in Rwanda until the expanded UNAMIR is deployed, in THE UNITED NATIONS AND RWANDA, supra note 123, at 307.

138. *See id.* at 308-09.

139. *See id.* at 57.

140. This assertion is particularly true regarding Western States. *See* UNITED STATES DEPARTMENT OF STATE, CLINTON ADMINISTRATION POLICY ON REFORMING MULTILATERAL PEACE OPERATIONS (1994). Unlike the United States in Somalia and Belgium in Rwanda, no ECOWAS member state withdrew peacekeepers after sustaining casualties in Liberia. More West African peace-keepers died in Liberia than Western peace-keepers in Somalia and Rwanda combined. In this sense, ECOWAS has illustrated that it is willing to make great sacrifices to bring about peace in West Africa.

141. In this context, democratic institutions are those which enjoy unimpeded support from the bulk of a state's populace.

142. *See United Nations and the Situation in Liberia, supra note 75.*

On September 30, 1991, Lieutenant-General Raoul Cedras led a successful *coup d'état*, sending President Aristide into exile. Immediately, the Organization of American States' Ministers of Foreign Affairs condemned the *coup d'état* and adopted two resolutions to that effect, urging "OAS member States to freeze the financial assets of the Haitian State and impose a trade embargo on Haiti"¹⁴³ According to Tesón, the Security Council was initially reluctant to intervene as it deemed the situation in Haiti to be a purely internal matter.¹⁴⁴ Nevertheless, the Organization of American States succeeded in putting the matter on the Security Council agenda. In 1993, the Organization's actions having failed to restore democracy to Haiti, the Security Council made mandatory the Organization's-recommended trade embargo under Chapter VII of the U.N. Charter by adopting Security Council Resolution 841.¹⁴⁵ Since the embargo did not sway the military junta, the Security Council boldly adopted Resolution 940, which determined "that the situation in Haiti continue[d] to constitute a threat to peace and security in the region . . . and [a]cting under Chapter VII of the Charter . . . authorize[d] Member States to form a multinational force . . . to use all necessary means to facilitate the departure from Haiti of the military leadership."¹⁴⁶ This was the first time the Security Council authorized military force to remove a *de facto* government from power, and the first time a group of states were authorized to restore democracy as opposed to law and order.¹⁴⁷

In order to avoid a U.S.-led "peace invasion," the military junta "agreed to resign when a general amnesty would be voted into law by the Haitian Parliament, or by 15 October 1994, whichever was earlier."¹⁴⁸ By October 10th, with peace looming, the twenty-eight-nation multi-national force, consisting of 21,000 troops, began to scale down. Soon after, the United Nations Mission for Haiti (UNMIH) replaced the multinational force and assisted the *de jure* government to restore democracy.

U.N. intervention in Haiti represents a unique case, as there was never a genuine threat to international peace and security.¹⁴⁹ The military junta did

143. *Id.*; see Brown, *supra* note 4, at 355 n.120.

144. See Tesón, *supra* note 4, at 355.

145. President Aristide requested that the United Nations deploy a monitoring group in Haiti. Further, the Permanent Representative of Haiti requested that the President of the Security Council make the Organization of American States' trade embargo mandatory. See *United Nations and the Situation in Liberia*, *supra* note 75, at 3; S.C. Res. 841, U.N. SCOR, 3238th mtg., U.N.Doc. S/RES/841 (1993).

146. S.C. Res. 940, U.N. SCOR, 3413rd mtg., U.N.Doc. S/RES/940 (1994). In practice, the American-brokered Security Council resolution mirrored a typical John Wayne movie with its "get out before sundown or else" proclamation.

147. See *id.* Although as previously stated, it can be argued that the United Nations attempted to "create democracy" in Somalia.

148. See *United Nations and the Situation in Liberia*, *supra* note 75, at 14. Further, the military junta agreed to assist the multinational force in maintaining peace and security.

149. See *id.* at 1; see also S.C. Res. 940, U.N. SCOR, 3413rd mtg., U.N.Doc. S/RES/940 (1994).

not commit grave human rights violations (as did Hutus in Rwanda), and the state did not collapse or slide into anarchy (as occurred in Liberia and Somalia). Nonetheless, Security Council Resolution 940 may have been the most aggressive resolution ever adopted. Perhaps, Resolution 940 best evidences the international community's willingness to use military force to avert violent conflict and defend democratic institutions.¹⁵⁰ Certainly, the international community had witnessed more than enough blood-shed in Liberia, Iraq, Yugoslavia, Somalia and Rwanda. However, in Haiti, power was handed over with little incident. The U.S.-led operation in Haiti was a clear and perhaps unintended illustration of preventative humanitarian action, as opposed to humanitarian intervention.¹⁵¹ Yet, it does not appear that the United Nations intended to set a precedent in Haiti. Nonetheless, as the discussion below will illustrate, such a precedent was set.

F. The Central African Republic (CAR)

The case of the CAR is important to examine because similar to the ECOWAS mission in Liberia, it was the second time that: (1) the whole of the international community supported humanitarian intervention by a group of states in a purely internal conflict; (2) the United Nations had co-deployed forces with an operation already underway; and (3) the Security Council retroactively authorized a unilateral intervention which entailed the use of force, thus placing a retroactive *de jure* seal on the intervention. More important however, the case of the CAR again evidences the international community's acceptance of humanitarian intervention by groups of states when a democratic regime has been violently and illegally dislodged.

Since April 18, 1996, the CAR has been shaken by a series of mutinies orchestrated by members of the French trained Central African Armed Forces, "stemming to a large extent from widespread public discontent over social and economic problems exacerbated by prolonged non-payment of salary arrears."¹⁵² Many public servants, including members of the armed forces, had been demanding payment of salary arrears from 1992.¹⁵³ According to Premier Jean-Paul Ngoupande, the mutineers sought to overthrow the government of President Ange-Felix Patasse.¹⁵⁴

150. It would be a mistake not to factor in keen American pressure to take military action in Haiti.

151. U.N. action in Haiti may have curtailed deadly conflict between the military junta and pro-Aristide supporters.

152. *Report of the Secretary-General Pursuant to Resolution 1136 (1997) Concerning The Situation In The Central African Republic*, U.N. SCOR, 53rd sess., U.N. Doc. S/1998/61 (1998); *See Central African Republic: Angel on a Pinhead*, AFRICA CONFIDENTIAL, May 10, 1996; *CAR: Mutineers' Mistake*, AFRICA CONFIDENTIAL, June 7, 1996; *CAR: Echoes of Zaire*, AFRICA CONFIDENTIAL, Nov. 29, 1996; *CAR: French Fire*, AFRICA CONFIDENTIAL, Jan. 17, 1997; *CAR: French Leave*, AFRICA CONFIDENTIAL, Oct. 10, 1997; *Patasse's Problems*, AFRICA CONFIDENTIAL, Mar. 6, 1998.

153. *See Central African Republic: Angel on a Pinhead*, *supra* note 152.

154. *See CAR: Echoes of Zaire*, *supra* note 152.

France, said to have had 2500 legionnaires in the country, took the leading role in quashing the mutinies.¹⁵⁵ French troops are said to have used Puma helicopters to launch a "furious retaliatory attack on rebel positions," killing more civilians than mutineers.¹⁵⁶ As a result, the French intervention came under serious scrutiny in Paris, as "Defense Minister Charles Millon's predecessor, François Leotard, called for a parliamentary debate . . . [and] . . . Socialist leader Lionel Jospin said the secret defense pact with Bangui was supposed to be activated only by external attack."¹⁵⁷ Amidst growing pressure from Paris and President Patasse for a French withdrawal from the CAR, in late September 1997, French troops began to depart.¹⁵⁸

In late January 1997, pursuant to requests made by President Patasse at the Nineteenth Summit of Heads of State and Government of France and Africa, and following the Conference on Consensus-building and Dialog, the Heads of State of Gabon, Burkina Faso, Chad and Mali established the Inter-African Mission to Monitor the Implementation of the Bangui Agreements (MISAB).¹⁵⁹ On February 8, 1997, MISAB deployed 800 troops to the CAR to restore peace and security and to "monitor the implementation of the Bangui Agreements, and [to conduct] operations to disarm the former rebels, the militia and all other unlawfully armed individuals."¹⁶⁰ Under the military command of Gabon and with logistical and financial support from France and the Organization of African Unity, Burkina Faso, Chad, Gabon, Senegal and Togo participated in the mission.¹⁶¹

On August 6, 1997, the Security Council adopted Resolution 1125, which deemed the situation in the CAR a threat to international peace and security and authorized Member States participating in MISAB to take enforcement action to ensure the security and freedom of movement of their personnel.¹⁶² The Security Council adopted three additional resolutions which extended MISAB's mandate to take enforcement action to guarantee the security and movement of its personnel.¹⁶³

155. See *CAR: Mutineers' Mistake*, *supra* note 152, at June 7, 1996. This was the fourth time that French troops have intervened to save Patasse's regime. See *CAR: French Leave*, *supra* note 152.

156. See *CAR: French Fire*, *supra* note 152.

157. Although it would be beyond the scope of this article to discuss the legality of France's intervention in the CAR, it appears not to have been justified under international law. See *id.*

158. See *id.*

159. The Nineteenth Summit of Heads of State and Government of France and Africa was held in Ouagadougou in December 1996; the Conference on Consensus-building and Dialog was held in Bangui in mid-January 1997. See *Report of the Secretary-General Pursuant to Resolution 1136 (1997) Concerning The Situation In The Central African Republic*, U.N. SCOR, 53rd sess., U.N. Doc. S/1998/61 (1998).

160. See *id.* Without intervention by MISAB, deadly conflict would have engulfed the state.

161. See *id.*

162. See S.C. Res. 1125, U.N. SCOR, 3808th mtg., U.N.Doc. S/RES/1125 (1997).

163. See S.C. Res. 1152, U.N. SCOR, 3853rd mtg., U.N.Doc. S/RES/1152 (1998); S.C.

On March 27, 1998, the Security Council adopted Resolution 1159 creating the United Nations' Mission in the Central African Republic (MINURCA),¹⁶⁴ to assist in the maintenance of peace, security, law and order, and protect key installations in Bangui; to monitor the disarmament process; to ensure security and freedom of movement of U.N. personnel and the safety and security of U.N. property; and to provide police training for the national police and technical support to national electoral bodies.¹⁶⁵ The Security Council mandated Secretary-General Kofi Annan to "secure a smooth transition between MISAB and MINURCA by 15 April 1998."¹⁶⁶ Kofi Annan selected Oluyemi Adeniji, a Nigerian, to be his special representative to the CAR.¹⁶⁷

The MISAB intervention in the CAR appears to have been legal because President Patasse was in *de facto* control of the state when he requested external assistance, and the mission seems to have been carried out in a neutral fashion. Some reports have suggested that MISAB was discredited because it failed to disarm Patasse's loyalist militias, many of whom "wearing MISAB insignia have plundered villages . . ."¹⁶⁸ Nevertheless, since the member states of MISAB took unilateral enforcement action without authorization from the Security Council, the intervention would have to be deemed unlawful under Article 2(4) of the U.N. Charter, unless it can be shown that they properly invoked a right to humanitarian intervention.

Although the mutinies spawned violent conflict between the Central African Armed Forces, French legionnaires, and mutineer-rebels, it cannot be said that there were wide spread human rights abuses of the type that would justify humanitarian intervention. Nor did the fighting cause Patasse's government to collapse, although it did fold to some degree, causing the state to slide into a state of chaos.¹⁶⁹ Likewise, the mutineers were not successful at "fully" dislodging Patasse's democratically elected regime, an important prerequisite to humanitarian intervention. Therefore, since none of the normative criteria discussed earlier appear to be satisfied, the MISAB intervention would not appear to qualify as a lawful humanitarian intervention.

Conversely, since Patasse's government was barely able to maintain law and order,¹⁷⁰ and due to the fact that continued fighting between loyal gov-

Res. 1136, U.N. SCOR, 3829th mtg., U.N.Doc. S/RES/1136 (1997); and S.C.Res. 1155, U.N. SCOR, 3860th mtg., U.N.Doc. S/RES/1136 (1998).

164. Approximately 1350 personnel are supposed to participate in the mission. See S.C. Res. 1159, U.N. SCOR, 3867th mtg., U.N.Doc. S/RES/1159 (1998).

165. *See id.*

166. *Id.*

167. *See Nigerian Heads U.N. Mission In Central African Republic*, PANAFRICAN NEWS AGENCY, Apr. 7, 1998.

168. *See CAR: French Leave*, *supra* note 152.

169. Meaning that the government was almost overcome by successive revolts.

170. If Patasse's regime would have lost *de facto* control of the state or its ability (absolute) to maintain law and order, international law would have forbade intervention by

ernment forces and the military rebels had engulfed the country, MISAB seems to have been entitled to intervene to forestall the fighting and avert state collapse and absolute anarchy.¹⁷¹ Moreover, as the above discussion shows, the international community appears willing to condone intervention to defend and safeguard democratic institutions. Whether such a right would fit under the purview of the doctrine of humanitarian intervention or some other norm of international law is unclear. As stated above, this would seem to depend on how the civilian population of a state reacts to a challenge to the regime in power, and based on this, whether the civilian population would be threatened with death or suffering on a grand scale. As the above discussion shows, any time the latter condition can be confirmed, state's practice suggests that intervention is lawful when alleviating such conditions (United Nations in Haiti and ECOWAS in Sierra Leone).

In conclusion, the case of the CAR represents the second instance in which the Security Council has *retroactively placed a de jure seal* on a prior unilateral intervention which entailed the use of force by a group of states, and co-deployed forces with an operation already underway. Furthermore, it was the second time that the whole of the international community supported unilateral humanitarian intervention by a group of states in a purely internal conflict. Hence, in order to avert the consequences of civil war, the case of the CAR taken together with the cases of Liberia and Haiti evidence that the international community may condone humanitarian intervention by groups of states when democratic governments are being violently and illegally dislodged.

IV. ECOWAS AND THE CASE OF SIERRA LEONE: NEW CRITERIA?

There is no question that the international community's responses to the ECOWAS intervention in Sierra Leone were influenced by the actions of ECOWAS in Liberia, MISAB in the CAR, the U.S. and allied operation in Iraq, and U.N. action in Liberia, Somalia, Yugoslavia, Rwanda, Haiti, and the CAR. Taken together, the above case studies evidence that, regardless of the legal basis for intervention, humanitarian intervention by groups of states, regional actors, or the United Nations in internal conflicts appears lawful.

The ECOWAS intervention in Sierra Leone raises several legal questions, some of which parallel those discussed above and others which do not.¹⁷² Just as it had done in Liberia, ECOWAS militarily intervened in Si-

MISAB, as it would have interfered with the civilian populaces right to self-determination. See Schachter, *supra* note 30, at 1641; see also Doswald-Beck, *supra* note 82, at 195-96.

171. It is estimated that several hundred civilians died in the fighting. See *Car: Echoes of Zaire*, *supra* note 152.

172. This section will not include a detailed analysis of the events which led to the conflict in Sierra Leone.

erra Leone without U.N. authorization.¹⁷³ However, unlike the Liberian case, it is unclear whether ECOWAS was entitled to invoke a right to humanitarian intervention, although there is some evidence to support this notion. Notwithstanding, it appears that ECOWAS can justify intervention on other grounds.

The case of Sierra Leone further evidences the following points: (1) that customary international law seems to recognize a right to unilateral humanitarian intervention by states or regional actors in internal conflicts; and (2) that humanitarian intervention may be justified when a group of states or regional actor attempts to restore democracy to a state which has been violently and illegally dislodged (or collapsed and is sliding into anarchy) against the will of its populace, especially when a population is threatened with death or suffering on a grand scale. This contention is supported by the international community's support for the U.N. missions in Liberia, Somalia, Rwanda, Haiti, the CAR, the interventions by ECOWAS in Liberia and Sierra Leone and the MISAB mission in the CAR. However, any invocation of a right to humanitarian intervention to "defend" or "safeguard" democracy would only seem permissible when the civilian population of a state is threatened with death or suffering on a grand scale. Without the latter condition, any intervention aimed at defending, safeguarding or restoring democracy as opposed to law and order would appear to fall outside the realm of humanitarian intervention.

A. Background

In February and March of 1996, in the midst of a civil war, Sierra Leone held its first parliamentary and presidential elections in thirty years.¹⁷⁴ As a result, the Sierra Leone Peoples Party led by President Ahmed Tijan Kab-

173. However, on October 8, 1997 the Security Council adopted Resolution 1132 which imposed an arms and petroleum embargo against the junta. The resolution also imposed travel restrictions against the junta and adult members of their families; ECOWAS was sanctioned to enforce the embargo. See S.C. Res. 1132, U.N. SCOR, 3822nd mtg., U.N.Doc. S/RES/1132 (1997).

174. The election followed five years of civil war between the government of Sierra Leone and the Revolutionary United Front. During the war, Sierra Leone's Military Force, traditionally used for external defense, the national police force and civil defense militias (Kamajors) provided internal security. The military force was supported by the Nigerian and Guinean military. The government also employed Executive Outcomes, a private South African mercenary firm. See *Report of the Secretary-General on Sierra Leone*, U.N. SCOR, 51st sess., U.N. Doc. S/1997/80 (1997). ECOWAS, the Organization of African Unity, the United Nations, and numerous non-governmental organizations were involved in setting the stage for the elections. See AFRICA RESEARCH BULLETIN, June 1997, at 12733; AFRICA RESEARCH BULLETIN, May 1997, at 12694; *West Africa, A Coup in Freetown*, AFRICA RESEARCH BULLETIN, June 1997, at 887; *ECOWAS Intervenes To Restore Democracy*, AFRICA TODAY, July/Aug. 1997, at 24; U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, SIERRA LEONE COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1996 (1997).

bah came into power.¹⁷⁵ In spite of the election, fighting between the Government of Sierra Leone and the Revolutionary United Front, which contested the election, continued. On November 30, 1996, the Government of Côte d'Ivoire, ECOWAS,¹⁷⁶ the United Nations, the Organization of African Unity, and the Commonwealth States facilitated peace-talks which culminated into the Abidjan Accord, ending the civil war.

On May 25, 1997, approximately six months after the war, several junior military officers led by Major Johnny Koromah successfully overthrew the democratically elected government of President Kabbah, forcing him to flee to Guinea.¹⁷⁷ Before fleeing, President Kabbah officially requested that Nigeria and ECOWAS intervene and restore him to power.¹⁷⁸

During the coup, in order to prevent a counter-offensive by the Nigerian Forces Assistant Group (NIFAG) and ECOMOG, Koromah's forces tactically attacked both contingents.¹⁷⁹ The coup appears to have been successful due to complicity by NIFAG officers who unintentionally leaked information revealing when there would be a change of NIFAG guard units with other units stationed on the outskirts of Monrovia, Liberia.

The whole of the international community condemned the coup.¹⁸⁰ For example, during the Organization of African Unity Council of Ministers sixty-sixth Ordinary Session in Harare, Zimbabwe in May, 1997, the Council of Ministers decided that it "[s]trongly and unequivocally condemns, the *coup d'état* . . . and calls for the immediate restoration of constitutional order [and] appeals to the leaders of ECOWAS to assist the people of Sierra Leone to restore constitutional order to the country"¹⁸¹

175. See *Report of the Secretary-General on Sierra Leone*, *supra* note 174.

176. It is important to note that prior to and during the civil war in Sierra Leone, ECOWAS maintained a military base there to carry-out peacekeeping operations in Liberia during the civil war. See *Tougher Measures Against Junta in Freetown*, PANAFRICAN NEWS AGENCY, Sept. 2, 1997.

177. President Kabbah believes that the military junta seized power in order to profit from the country's rich supply of diamonds and gold. He accused the Revolutionary United Front of deceiving the regular army into staging the coup. *Kabbah Urges ECOWAS Leaders To Restore Him To Power*, PANAFRICAN NEWS AGENCY, Sept. 2, 1997.

178. See AFRICA RESEARCH BULLETIN, June 1997, *supra* note 174, at 12695; *Kabbah Urges ECOWAS Leaders To Restore Him To Power*, *supra* note 177.

179. See *ECOWAS Intervenes To Restore Democracy*, *supra* note 174, at 24; AFRICA RESEARCH BULLETIN, May 1997, *supra* note 174, at 12694. NIFAG was created pursuant to the Status of the Forces Agreement (SOFA) between Nigeria and Sierra Leone. SOFA is essentially a defense pact between the two countries under which Nigeria provides military and security support to Sierra Leone. See Status of Forces Agreement, *Between the Government of the Federal Republic of Nigeria and The Government of the Republic of Sierra Leone Concerning the Provision of Military and Security Assistance to the Republic of Sierra Leone* (1997) [hereinafter SOFA].

180. See U.S. Department of State Office of the Spokesman Press Statement, *U.S. Reaction to Coup in Sierra Leone*, May 26, 1997; *Statement by the President of the Security Council*, U.N. SCOR, 52d Sess., U.N. Doc. S/PRST/1997/29 (1997).

181. Organization of African Unity Council of Ministers sixty-sixth Ordinary Session

Soon after the coup, and pursuant to its obligations under the Status of Forces Agreement (SOFA), the Republic of Nigeria sent additional NIFAG troops to Sierra Leone to restore law and order.¹⁸² NIFAG was met with strong resistance from the junta and the Revolutionary United Front, and was forced to retreat. On August 30, 1997, during the 20th Summit of ECOWAS in Abuja, Nigeria, ECOWAS officially mandated ECOMOG to enforce sanctions against the junta and restore law and order to Sierra Leone.¹⁸³ In support of ECOWAS efforts, on October 8, 1997 the Security Council adopted Resolution 1132, which imposed an arms and petroleum embargo and travel restrictions against the military junta. The resolution sanctioned ECOWAS to enforce its terms.

On February 5, 1998, "responding to an attack by junta forces on [its] position at Lungi, ECOMOG launched a military attack on the junta" which led to its removal from power, and expulsion by force from Freetown on February 12, 1998.¹⁸⁴ By early March 1998, "ECOMOG [had] established itself successfully across most of the country."¹⁸⁵ On March 10, 1998, President Kabbah returned to Freetown to resume his position as Head of State of Sierra Leone.¹⁸⁶ He was accompanied by General Sani Abacha, former Chairman of ECOWAS and Head of State of Nigeria; President Lansana Conteh, Head of State of Guinea; President Alpha Oumar Konare, Head of State of Mali; President Ibrahim Bare Mainassara, Head of State of Niger and the Vice-President of Gambia.

On March 16, 1998, the Security Council adopted Resolution 1156 which terminated prohibitions on the sale or supply of petroleum and petroleum products to Sierra Leone.¹⁸⁷ On April 17, 1998, the Security Council adopted Resolution 1162 which commended ECOMOG for restoring peace to Sierra Leone and authorized "the deployment, with immediate effect, of up to ten United Nations' military liaisons and security advisory personnel" to assist ECOMOG in the "identification of the former combatant elements to be disarmed and the design of a disarmament plan, as well as to perform other related security tasks."¹⁸⁸ Further, the resolution encouraged the Secretary-General to "submit to the Security Council recommendations on the

28-30 May, 1997, Harare, Zimbabwe, Draft Decisions, CM/Draft/Dec.(LXVI) Rev. 1, at 18.

182. See AFRICA RESEARCH BULLETIN, June 1997, *supra* note 174, at 12734.

183. See *Tougher Measures Against Junta in Freetown*, PANAFRICAN NEWS AGENCY, Sept. 2, 1997. However, in early August 1997, pursuant to requests by ECOWAS member states, former Nigerian Head of State and ECOWAS Chairman General Sani Abacha appears to have issued an "executive directive" authorizing an economic blockade against Sierra Leone to be enforced by ECOMOG.

184. *Fourth Report of the Secretary-General on the Situation in Sierra Leone*, U.N. SCOR, 53d sess., U.N. Doc. S/1998/249 (1998).

185. *Id.*

186. *See id.*

187. See S.C. Res. 1156, U.N. SCOR, 3861st mtg., U.N.Doc. S/RES/1156 (1998).

188. S.C. Res. 1162, U.N. SCOR, 3872nd mtg., U.N.Doc. S/RES/1162 (1998).

possible deployment . . . of United Nations' military personnel."¹⁸⁹

Before discussing the legality of intervention in Sierra Leone, the following points must be made. First, before the coup, there were two separate military contingents in Sierra Leone, NIFAG and ECOMOG. However, after the coup, both forces integrated, making it difficult to distinguish them.¹⁹⁰ Second, pursuant to SOFA, it was Nigeria and not ECOWAS who militarily engaged the junta in an attempt to restore law and order to Sierra Leone.¹⁹¹ Last, it appears that many NIFAG troops were on "loan" from ECOMOG, meaning that many Nigerian soldiers performed in a dual capacity, serving both NIFAG¹⁹² and ECOMOG.¹⁹³

B. The Nigerian Intervention

As previously mentioned, immediately after the coup, in an attempt to ward off hostile junta troops, NIFAG engaged the military junta. Both NIFAG troops and Nigerian-ECOMOG troops assigned to NIFAG participated.

Unilateral intervention by Nigeria appears to have been lawful for three reasons: (1) President Kabbah requested that Nigeria intervene to restore democracy; (2) the SOFA between Nigeria and Sierra Leone permits intervention in the event of an internal threat to the state; and (3) Nigeria was obligated and permitted to intervene under the ECOWAS Revised Treaty of 1993.

International law recognizes the right of an incumbent government to request military assistance from a third state in order to offset an illegal prior intervention by another state.¹⁹⁴ However, absent a defense pact (SOFA), and claims of humanitarian intervention aside, international law does not permit "forcible military intervention" by a third state in the purely internal affairs of another state.¹⁹⁵ In this context, wanting the above, Nigeria would

189. *Id.*

190. Since General Abacha was Head of State of Nigeria and Chairman of ECOWAS, merging both contingents would not have been difficult.

191. See AFRICA RESEARCH BULLETIN, June 1997, *supra* note 174, at 12734; BBC News World: Africa, *ECOMOG: peacekeeper or participant?*, Feb. 11, 1998; BBC News World: Africa, *Sierra Leone: key facts and figures*, Feb. 10, 1998.

192. For reasons already stated, ECOMOG had approximately 4000 troops stationed in Sierra Leone, the majority of which were Nigerian. See BBC News World: Africa, *ECOMOG: peacekeeper or participant?*, *supra* note 191. In addition, pursuant to SOFA, several hundred NIFAG troops were stationed there as well. See *id.*

193. For example, Major General Victor Malu served both as commander of ECOMOG in Liberia and NIFAG in Sierra Leone. See *West African Military Action In Sierra Leone Yet To Start*, PANAFRICAN NEWS AGENCY, June 6, 1997. He also was commander of ECOMOG operations in Sierra Leone.

194. See Wippman, *supra* note 12, at 452; see also OSCAR SCHACHTER, *INTERNATIONAL LAW IN THEORY AND PRACTICE* 160 (1991).

195. Yet, international law does not prohibit a third state from providing tangible military assistance or advisors to offset an internal rebellion. See Wippman, *supra* note 12

be unable to justify using NIFAG forces stationed in Sierra Leone or reinforcements to oust the junta and reinstate the *de jure* government to power.

However, since the SOFA between the two countries sanctioned intervention, the intervention appears to have been lawful. According to the terms of SOFA, "NIFAG shall have the right to apply force in the sustenance of the sovereignty and territorial integrity of the Republic of Sierra Leone."¹⁹⁶ Hence, Nigeria-NIFAG troops were obliged to attempt to restore stability to the Republic, and given the illegality and unpopularity of the coup, create the conditions so that the *de jure* government could return to power.¹⁹⁷ From this view, Nigeria was justified in sending reinforcements and using force to protect its citizens and fulfill its obligations under SOFA. International law recognizes the right of sovereign states to protect the rights of their citizens abroad.¹⁹⁸ For that reason, Nigeria seems to have been entitled to send reinforcements to protect NIFAG soldiers and their families. Moreover, Nigeria was justified in proportionately responding to repeated attacks by junta forces on NIFAG "security stations" and personnel.¹⁹⁹

Finally, the ECOWAS Revised Treaty of 1993 seems to confirm the legality of the Nigerian intervention.²⁰⁰ Under Article 58 of the Treaty, member states "undertake to work to safeguard and consolidate relations conducive to the maintenance of peace, stability and security within the region" and pledge to "co-operate with the Community in establishing and strengthening appropriate mechanisms for the timely prevention and resolution of *intra-State* and *inter-State* conflict . . ."²⁰¹ Moreover, Article 58 calls on member states to "establish a regional peace and security observation system and *peace-keeping forces* where appropriate."²⁰² Hence, according to the Treaty, Nigeria was obligated to send peace-keeping forces to Sierra Leone to restore law and order and prevent the state from descending into anarchy.

at 447; Doswald-Beck, *supra* note 82, at 251 (1986).

196. SOFA, Article 21.1.1 (1993), *supra* note 179.

197. Nevertheless, as stated above, had Sierra Leone been in the midst of a civil war (such as was the case in Liberia), or it can be shown that Nigeria intervened solely to remove the junta from power, as opposed to restoring law and order, the intervention would have violated international law. But, since no evidence has been forwarded to support such a claim, and the junta was met with strong resistance from the civilian population, it was not unable to provoke a civil war, hence, the *de jure* government was entitled to request outside assistance.

198. See R.N. Gardner, *Commentary on the Law of Self-Defense*, in *LAW AND FORCE IN THE INTERNATIONAL ORDER* 49, 52 (Lori Fisler Damrosch & David Schaffer, eds., 1991); R.B. Lillich, *Forcible Protection of Nationals Abroad: The Liberian Incident of 1990*, 35 *GERMAN Y.B. INT'L L.* 205 (1991); Louise Doswald-Beck, *The Legality of the U.S. Intervention in Grenada*, 31 *NETH. INT'L L. REV.* 355, 361 (1984). Also, under SOFA, *supra* note 179, Article 21.1.2, NIFAG was entitled to a right of self-defense.

199. See *Nicaragua v. U.S.A.*, 1986 ICJ Rep. 14, at 94, 122-23.

200. See Economic Community of West African States Revised Treaty Art. 58 Regional Security, 24 July 1993 [hereinafter ECOWAS Treaty].

201. *Id.* (emphasis added).

202. *Id.* (emphasis added).

For the above stated reasons, the Nigerian intervention appears to have been lawful. Moreover, the fact that the United Nations did not reprimand Nigeria for taking unilateral action lends credence to its validity.

C. The ECOWAS Intervention

The ECOWAS intervention in Sierra Leone seems to be justified on several grounds, all of which fall within the purview of the generally recognized exceptions to the principle of non-interference. Forcible military intervention by ECOWAS appears to be justified for the following reasons: (1) President Kabbah requested that ECOWAS intervene; (2) ECOWAS appears to have been entitled to invoke a right to humanitarian intervention; (3) ECOWAS was permitted to intervene under the ECOWAS Revised Treaty of 1993; (4) ECOWAS may have acquired the requisite legal status to enable it to act as a *de jure* government; and (5) the Security Council retroactively authorized the intervention.

As previously stated, under international law, an incumbent *de jure* regime is entitled to request outside assistance (military equipment, but not troop support) to quell internal disorder, as long as the disorder has not matured into civil war, and the rebels are not in *de facto* control of the state.²⁰³ Therefore, considering the circumstances of this case, Kabbah was entitled to request that ECOWAS introduce a peace-keeping force into Sierra Leone to maintain law and order, and receive external military assistance.

Shortly after the coup, the situation in Sierra Leone became chaotic. Yet, it cannot be said that the country was consumed by anarchy or that there were mass violations of human rights warranting humanitarian intervention. Still, the author contends that a claim to humanitarian intervention may be justified because the *de jure* government had been illegally and violently dislodged against the will of the civilian population, who because of their active opposition to the coup were threatened with death and suffering on a grand scale. Moreover, civilian opposition to the coup by way of armed resistance and nationwide employment strikes caused the states' basic infrastructure to collapse. Without intervention by ECOMOG, fighting between the junta, the Revolutionary United Front, and the *Kamajors* and other civilians loyal to President Kabbah would have continued to intensify, causing untold death and destruction.²⁰⁴

Although the United Nations did not intend for the Haiti intervention to serve as a viable precedent, it was no doubt an impetus for calls to restore democracy in Sierra Leone. In fact, the events in Sierra Leone may impel the international community to regard Haiti as a precedent by default. Since there is no consensus as to whether international law recognizes a right to democratic governance, states would seem pre-mature in exclusively justifying intervention on such grounds. However, when a democratic government

203. See Doswald-Beck, *supra* note 82, at 194.

204. See AFRICAN RESEARCH BULLETIN, June 1997, *supra* note 174, at 12735.

has been violently and illegally dislodged against the will and to the detriment of its civilian population, current trends (United Nations/United States in Haiti, MISAB in the CAR and ECOWAS in Sierra Leone) verify that humanitarian intervention may be justified. Again, for such an intervention to be lawful, the population would have to be threatened with death or suffering on a grand scale, the case of Sierra Leone being the better example.

Paradoxically, the international community has demonstrated its willingness to support forcible intervention in the internal affairs of states (Haiti, the CAR and Sierra Leone) to safeguard democracy, without there being a genuine threat to international peace and security. Moreover, in none of the above cases did the junta commit human rights abuses so heinous as to violate the *jus cogens* norms of international law, nor did any of the states slide into anarchy. One explanation for this inconsistency may be that the international community is witnessing the development of a new norm of international law, namely, the recognition of a right to democratic governance. According to Tesón, Western nations have accepted the principle of democracy as a rule which is fully enforceable by international law:

There can be little doubt that a principle of democratic rule is today part of international law. While in a universal context the recognition of the principle has only had the effect of subtracting the question of democratic rule from the exclusive jurisdiction of states, the nations in Europe and the Americas have evaluated the principle of democracy to the category of a rule which is fully enforceable through appropriate regional collective mechanisms.²⁰⁵

The cases of ECOWAS in Sierra Leone and Liberia and MISAB in the CAR demonstrate that many African states have also accepted the principal of democracy as a rule enforceable through regional collective mechanisms. As a result, in certain circumstances, international law today seems to recognize the existence of a right to democratic governance as an exception to the principle of non-intervention. However, such an exception would only appear lawful when, for example, undemocratic means are employed to unseat a democratic government, and such an unseating threatens the stability of a state and its domestic populace.²⁰⁶ On this issue, U.N. Secretary-General Kofi Annan stated, "Africa can no longer tolerate, and accept as fait accompli, coups against elected governments, and the illegal seizure of power by military cliques, who sometimes act for sectional interests, sometimes simply for their own."²⁰⁷ Although Kofi Anan's position may not reflect the thinking of all of the member-states of the United Nations, it is unlikely that this is a mi-

205. Tesón, *supra* note 4, at 335; see G.A. Res. 150, U.N. GAOR, 45th Sess., at 457-59, U.N. Doc. A/RES/45/150 (1991).

206. Again, democratic institutions are those which enjoy unimpeded support from the bulk of a state's populace. Hence, an "unelected" government which satisfies the above criterion may still be democratic.

207. *Secretary-General Pledges Support of United Nations in Helping Sierra Leone Leave Behind Unfortunate Chapter in Country's History*, U.N.P.R., 53rd sess., U.N. Doc. SG/SM/6481 - AFR/44 (1998).

nority view.

In this context, international law would not permit intervention by states individually to restore or safeguard democracy, but alternatively, may permit unilateral intervention by groups of states or regional actors. Certainly, international support for the interventions in Haiti, the CAR and Sierra Leone support this contention.

As previously mentioned, unlike the ECOWAS Treaty of 1975, the ECOWAS Revised Treaty of 1993 permits its member states to establish a regional peace-keeping force to resolve internal conflicts.²⁰⁸ That being the case, and considering that Sierra Leone is a member of ECOWAS, the community was justified in mandating ECOMOG to restore law and order to Sierra Leone.

ECOWAS-ECOMOG may have acquired the requisite legal status to entitle it to a right of self-defense. Since many ECOMOG soldiers functioned in dual roles, serving both in NIFAG and ECOMOG,²⁰⁹ they were indiscriminately targeted by Koromah's junta. Thus, prior to Kabbah's request that ECOWAS intervene to restore law and order,²¹⁰ ECOMOG troops and the junta had already clashed.²¹¹ Accordingly, in consonance with the international right of self-defense, ECOMOG forces acted lawfully when they defended themselves against the junta.²¹²

ECOMOG appears to have had a two-tiered right of self-defense. First, as mentioned above, under international law, ECOMOG troops were entitled to protect themselves and community property. Consequently, they were also fit to engage "unruly" junta forces which attempted to prevent them from fulfilling their mandate.²¹³ Second, under international law, governments have an inherent right to defend the states they represent, regardless of whether the threat is internal or external.²¹⁴ It is therefore unlikely that a regional actor whose personnel and assets have been attacked by military elements in a host state would be entitled to act as a *de jure* government and quash the rebellion.

208. See ECOWAS Treaty, *supra* note 200.

209. See generally ECOWAS Treaty, *supra* note 200.

210. See AFRICA RESEARCH BULLETIN, June 1997, *supra* note 174, at 12694; Paul Ejime, *Kabbah Urges ECOWAS Leaders To Restore Him To Power*, PANAFRICAN NEWS AGENCY, Sept. 2, 1997.

211. See AFRICA RESEARCH BULLETIN, June 1997, *supra* note 174, at 12695.

212. See Oscar Schachter, *Authorized Uses of Force by the United Nations and Regional Organizations*, in LAW AND FORCE IN THE NEW INTERNATIONAL ORDER, *supra* note 198, at 83, 84-89.

213. See *id.* at 84. As noted earlier, ECOMOG maintained a military base in Sierra Leone and therefore did not need to enter or intervene in Sierra Leone in the physical sense. Nor did it need Sierra Leone's consent to impose and enforce economic sanctions. However, ECOWAS did need consent from the *de jure* government to intervene to restore law and order. Humanitarian justifications aside, if Kabbah had not requested assistance from ECOWAS, the intervention by ECOMOG would have been unlawful.

214. See ECOWAS Treaty, *supra* note 200.

Under international law, regional actors are not considered to have an independent legal personality, and therefore may not claim or invoke the same rights as states.²¹⁵ Stated differently, regional actors may not possess any powers not granted to them by their members, and states may not confer powers they do not maintain. Nonetheless, international law is silent on the issue of whether a regional actor could "acquire" the requisite legal personality to entitle it to act as a government. In the case of Sierra Leone, ECOWAS may have attained the requisite legal personality. Here, the junta leadership was aware that ECOMOG would attempt to quell the coup, and as a result strategically attacked ECOMOG headquarters and troops. The junta was no doubt threatened by ECOMOG's presence, as ECOMOG maintained enough military might to thwart the coup. In this sense, both the *de jure* government and ECOMOG were targeted by the junta. Furthermore, ECOMOG could not rely on the Armed Forces of Sierra Leone to protect it, since it was the very group that staged the revolt.

After the coup, ECOMOG and NIFAG troops stationed in Sierra Leone quickly set up key posts around Freetown, in effect limiting the junta's sphere of influence. ECOMOG was the only *de facto* authority, as it controlled more territory than Koromah's rebels and was the only entity capable of restoring and maintaining law and order. ECOMOG functioned as *ex officio* state administrator,²¹⁶ mediator, and peace-enforcer. Taken together, the above facts suggest that by August 1997, ECOMOG may have developed the requisite legal personality to entitle it to act as a quasi-*de jure* government and to take all necessary measures to restore constitutional order to the state.

Although the Security Council did not authorize ECOWAS-ECOMOG to take enforcement action, it supported forcible intervention by ECOWAS.²¹⁷ On October 8, 1997, two months after the ECOWAS intervention, the Security Council adopted Resolution 1132. The resolution stated "that all States shall prevent the sale or supply to Sierra Leone, by their nationals or from their territories, or using their flag vessels or aircraft, of petroleum and petroleum products and arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment."²¹⁸ In addition, it imposed travel restrictions on members of the "military junta and adult members of their families," to prevent them from fleeing the state.²¹⁹ The resolution sanctioned ECOWAS to "ensure [its] strict implementation i.e. enforce compliance."²²⁰

215. See generally Schachter, *supra* note 212, at 87-88.

216. The junta did not receive official recognition from any state because the international community recognized Kabbah's government as the *de jure* authority of Sierra Leone. See AFRICAN RESEARCH BULLETIN, June 1997, *supra* note 174, at 12733-35.

217. See U.N. SCOR, 3798th mtg., U.N. Doc. S/PRST/1997/36 (1997).

218. S.C. Res. 1132, U.N. SCOR, 3822th mtg., U.N. Doc. S/RES/1132 (1997).

219. *Id.*

220. *Id.*

Five years after co-deploying forces with ECOMOG in Liberia, and several months after the MISAB intervention, Resolution 1132 demonstrates that, in certain circumstances, the United Nations and the international community support and, in certain instances, encourage unilateral humanitarian intervention by groups of states and regional actors in purely internal conflicts. The Sierra Leone case represents the fifth instance (the other four being Liberia, Somalia, Haiti and the CAR) in which the Security Council has deemed an indisputably internal conflict a threat to international peace and security.²²¹ Just as Security Council Resolution 788 appears to have placed a *retroactive de jure seal* on the ECOWAS intervention in Liberia, and Resolution 1125 on the MISAB intervention in the CAR, Resolution 1132 seems to have done the same in Sierra Leone.

In addition, Security Council Resolution 1162²²² marked the first time that the United Nations co-deployed (UNOMIL) with a peace-keeping operation already set up by another organization (ECOMOG-Liberia).²²³ To the extent that the cases of Liberia and the CAR can be used as an indicator of future events, it is probable that the United Nations will co-deploy military personnel with ECOMOG in Sierra Leone. Yet, depending on the scope of the duties presently being performed by the U.N. "military liaison" and "security advisory personnel" in Sierra Leone, such a co-deployment may already be underway.

V. CONCLUSION

As the above discussion delineates, today's customary international law appears to permit humanitarian intervention by groups of states or regional actors in internal conflicts in three instances: (1) when human rights abuses are so grave that the *jus cogens* norms of international law have been violated; (2) when a state has collapsed and is sliding into a state of anarchy;²²⁴ and (3) to safeguard democracy when a democratic government has been violently and illegally dislodged against the will of its civilian population.

Taken together, the above case studies demonstrate that today, in certain instances, the international community has accepted the principle of unilateral humanitarian intervention. As a result, there can be no question that the customary international law doctrine of humanitarian intervention survived the post U.N. era. In addition, the fact that the Security Council

221. See S.C. Res. 1132, U.N. SCOR, 3822th mtg., U.N. Doc. S/RES/1132 (1997) (determining that the situation in Sierra Leone constituted a threat to international peace and security within the region).

222. See S.C. Res. 1162, U.N. SCOR, 3872d mtg., U.N. Doc. S/RES/1162 (1997). While authorizing the deployment of U.N. military liaison and security advisory personnel to Sierra Leone, and expressing its intention to consider proposals for the deployment of U.N. *military personnel*, this resolution shadowed Security Council Resolution 866, concerning Liberia. See S.C. Res. 866, U.N. SCOR, 3281st mtg., U.N. Doc. S/RES/866 (1993).

223. See S.C. Res. 866, U.N. SCOR, 3281st mtg., U.N. Doc. S/RES/866 (1993).

224. See Schachter, *supra* note 212, at 88.

has been used as a mechanism to "countersign" unilateral humanitarian intervention on three separate occasions (Liberia, the CAR and Sierra Leone) renders moot arguments to the contrary.

Clearly, the international community has demonstrated its willingness to entrust certain peace-enforcement missions to regional actors. And, as verified by the overwhelming support for the ECOWAS missions in Liberia and Sierra Leone and the MISAB intervention in the CAR, the international community seems eager to have African states take a leading role in the prevention, management and resolution of African conflicts.²²⁵ This is particularly true in the case of South Africa, which will take an undoubtedly more active role in enforcing the peace in the future as it asserts itself as a regional hegemon. Perhaps this explains why the interventions in Liberia, Sierra Leone, and the CAR met with little controversy, resistance, and scrutiny by the international community.

As Schachter asserts, "[i]t is probable that peacekeeping actions and perhaps limited enforcement will be employed by regional organizations more frequently in the future . . . [and be used] . . . to provide order to a country in internal conflict or near-anarchy."²²⁶ This assertion is best supported by requests from the United Nations that regional organizations take a more active role in the maintenance of international peace and security.²²⁷ For example, U.N. General Assembly Resolution 49/57 of December 9, 1994, "encourages regional arrangements and agencies to consider ways and means to promote closer cooperation and coordination with the United Nations, in particular in the fields of preventive diplomacy, peacemaking and post-conflict peace-building, and, where appropriate, peace-keeping."²²⁸

The ECOWAS and MISAB interventions demonstrated that Africans

225. This was the impetus behind the creation of the U.S.-led African Crisis Response Initiative, which was created to enhance African peacekeeping and humanitarian relief capacity by providing training and equipment (primarily communications) to African countries where the military accepts the supremacy of democratic civilian government and where there is a commitment to peacekeeping. The primary goal of the initiative is to create rapidly-deployable, interoperable units from stable and democratic countries. Other states, such as Britain, France, Belgium and the Nordic states, provide this training. To date, Senegal, Uganda, Malawi, Ethiopia, Mali and Ghana have partaken in the training. See United States Department of State, *African Crisis Response Initiative InterAgency Working Group Fact Sheet* (1997); see also Jeremy Levitt, *The African Crisis Response Initiative: A General Survey*, 28 AFRICA INSIGHT (1998).

226. See Schachter, *supra* note 212, at 88.

227. See UNITED NATIONS, THE 50TH ANNIVERSARY ANNUAL REPORT ON THE WORK OF THE ORGANIZATION 1996, at 306 (1996); UNITED NATIONS, CONFRONTING NEW CHALLENGES: ANNUAL REPORT ON THE WORK OF THE ORGANIZATION 1995, at 38-39 (1995) [hereinafter CONFRONTING NEW CHALLENGES]; UNITED NATIONS, AN AGENDA FOR PEACE 35-40 (1992); *Supplement To An Agenda For Peace: Position Paper Of The Secretary-General On The Occasion Of The Fiftieth Anniversary Of The United Nations*, U.N. GAOR, 50th Sess., at 20-21, U.N. Doc. A/50/60 (1995).

228. *Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security*, in CONFRONTING NEW CHALLENGES, *supra* note 227, at 38-39.

can and are becoming more efficient at managing conflict in Africa. According to Herbert Howe, in Liberia alone, the ECOWAS military leader, has suffered perhaps six hundred killed in action and spent perhaps a billion dollars, above normal operating costs, on a conflict that did not directly affect its own security, at a time when its 1995 foreign debt stood at \$35 billion. No Western nation, especially following the Somalian intervention, could match such commitment.²²⁹

ECOWAS has strongly contributed to spurring what appears to be new norms of customary international law, specifically with regard to the doctrine of humanitarian intervention. Taken together, the ECOWAS, MISAB, and U.N. interventions demonstrate a consistent pattern of commonality in action among states. This commonality evidences that there has been a shift in the law *de lege ferenda*, permitting unilateral humanitarian intervention by groups of states and regional actors in internal conflicts.

229. Herbert Howe, *Lessons of Liberia: ECOMOG and Regional Peacekeeping*, in NATIONALISM AND ETHNIC CONFLICT 419-20 (Michael E. Brown, ed., 1997).

