

AN UNEASY PEACE: MULTILATERAL MILITARY INTERVENTION IN CIVIL WARS

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*The Security Council shall determine the existence of any threat to the peace . . . and shall make recommendations, or decide what measures shall be taken . . . to maintain or restore international peace and security.*¹

I. INTRODUCTION

The United Nations is under siege. Many international lawyers assume that the theoretical principles embedded in the United Nations Charter are either irrelevant or have outgrown their usefulness. In practice, states have repeatedly demonstrated their willingness to intervene in the affairs of other states. This practice has not abated despite the prohibition on the use of force contained in Article 2(4) of the U.N. Charter.² Is this provision still good law, and does it still possess the power to bind states? Or, has the subsequent inconsistent practice of states altered its legal status? This Note argues that while many of the principles contained within the Charter are still crucial to our understanding of how international relations should be conducted, the international community must be prepared to move beyond the strict confines of the law to resolve the problems posed by intrastate conflict.

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1. U.N. CHARTER art. 39.

2. U.N. CHARTER art. 2, para. 4 (“All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations.”).

Civil wars deserve special attention because the proliferation of intrastate conflict has profound implications for the stability of the international system.³ A discussion of the problems raised by intrastate conflict is a critical first step in structuring the future practice of states, regional organizations, and other international bodies as they attempt to utilize prevention and nation-building strategies in the search for peace. Hence the need for the United Nations—for principles that focus on multilateral cooperation, as well as for actors who realize that the successful resolution of complex humanitarian crises may require more than a military response.

Yet the principles in the United Nations Charter regarding the use of force are sufficiently indeterminate as to require an examination of state practice. Furthermore, state practice, as examined through case studies of multilateral interventions, shows significant inroads in the limitations against the use of force. This is particularly evident where regional or multilateral actors are involved. In general, the international community has not resisted these changes. Does this mean that the traditional rule of non-intervention has become a dead letter?

This article will examine seven instances in which a group of states or regional organizations have intervened with military force in an ongoing civil war either because their interests were directly threatened or in order to avert grave humanitarian consequences. Parts I and II will define and explore the various permutations of multilateral and regional intervention. Part III will summarize the legal justifications advanced in favor of or against multilateral military intervention. Part IV will examine, through the use of country case studies, interventions where states either deviated from or ignored completely Article 2(4)'s prohibition against the use of force without prior Security Council authorization. The article will address the interventions by: (1) Belgium and the United States in the Democratic Republic of Congo (D.R.C.) in 1964; (2) the U.S. and Organization of American States (OAS) in the

3. INT'L COMM'N ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT 5 (2001) [hereinafter *THE RESPONSIBILITY TO PROTECT*] ("Intra-state warfare is often viewed, in the prosperous West, simply as a set of discrete and unrelated crises occurring in distant and unimportant regions. In reality, what is happening is a convulsive process of state fragmentation and state formation that is transforming the international order itself.").

Dominican Republic in 1965; (3) France and Belgium in Zaire in 1978; (4) the United States and the Economic Community of West African States Monitoring Group (ECOMOG) in Liberia in 1990; (5) the U.S. and Allied Forces in Iraq in 1991; (6) ECOMOG in Sierra Leone in 1997; and (7) NATO in Kosovo in 1998. In conclusion, this article will show that despite slight deviations from the old formulas, the Security Council has proven that it is flexible to new understandings of the function and purpose of international law.

II. MULTILATERAL AND REGIONAL ACTIONS

*Under the Charter, the Security Council has and will continue to have primary responsibility for maintaining international peace and security, but regional action as a matter of decentralization, delegation and cooperation with the United Nations efforts could not only lighten the burden of the Council but also contribute to a deeper sense of participation, consensus and democratization in international affairs*⁴

One might address the topic of multilateral intervention from a number of different standpoints. However, in order to narrow the potentially limitless scope of the subject, in this Note "multilateral" intervention will refer to actions taken by two or more states, either acting in concert or loosely associated, as well as actions by regional organizations. Various regional organizations, such as the Organization of African Unity (OAU), the Economic Community of West African States (ECOWAS), and the Organization of Eastern Caribbean States (OECS) have gained a substantial measure of legitimacy and have managed to influence decisions not only within their regions but in the United Nations and the broader international community as well.

Chapter VIII of the Charter sets out the parameters for actions taken by regional organizations.⁵ Article 53(1) pro-

4. *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, Report of the Secretary General, U.N. GAOR/SCOR, 47th Sess., Preliminary List Item 10, ¶ 64, U.N. Docs. A/47/277 & S/24111 (1992) [hereinafter *An Agenda for Peace*].

5. "Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations." U.N. CHARTER art. 52, para. 1.

vides an important check on regional decision-making: "But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council . . ." ⁶ The two exceptions to this rule are (1) in the case of "enemy states," ⁷ defined as states who were enemies of any signatories of the Charter during World War II; ⁸ or (2) "regional arrangements directed against renewal of aggressive policy on the part of [an enemy] state." ⁹ Outside of these exceptions, however, the Charter imposes clear limits on the scope of regional organizations' activities.

III. LEGAL JUSTIFICATIONS ADVANCED FOR MULTILATERAL INTERVENTION

A. *Military Intervention*

The term "intervention" may refer to a number of different situations. It may, for example, include either: (1) the training and support of revolutionary forces; or (2) the sale of arms to either side of an external conflict. ¹⁰ However, because including the sale of arms and war material would expand the scope of this paper to conflict situations that are not strictly civil wars, multilateral military intervention will refer to the active participation in fighting *or* direct military assistance given by the national forces of several states or regional organizations, acting in conjunction with each other, in the internal conflicts of another state. "Internal conflicts" may include ethnic strife, the overthrow of an established government, the absence of law and order, the unconstitutional seizure of power in a U.N. member state, or general violence existing within the boundaries of a state. ¹¹

In the *Nicaragua* case, the International Court of Justice stated that the mere supply of funds (by the U.S.) to the *Con-*

6. *Id.* art. 53, para. 1.

7. *Id.*

8. *Id.* art. 53, para. 2.

9. *Id.* art. 53, para. 1.

10. DAVID EVAN TRANT LUARD, *CONFLICT AND PEACE IN THE MODERN INTERNATIONAL SYSTEM* 121 (2d ed., Macmillan Press 1988) (1968).

11. Lori Fisler Damrosch, *Introduction*, in *ENFORCING RESTRAINT: COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS* 1, 4-5 (Lori Fisler Damrosch ed., 1993).

tras did not constitute an illegal use of force.¹² In many of the case studies found below, insurgents involved in civil strife received indirect assistance in the form of arms, funds, or machinery. Since inclusion of any situation in which outside assistance is supplied to fuel strife would unreasonably expand the scope of the paper and distract from the focus on intrastate conflict, this article will be limited to a discussion of interventions where troops have been purposely contributed to effect a change in the status quo in the internal affairs of another state. Peacekeeping or non-enforcement mechanisms will necessarily be excluded because while they may involve the use of military force, they are not intended to bring about a change in the status quo.

Furthermore, because there are too many situations in which the presence of outside participants blurs the line between intrastate and interstate conflict, this article will address only civil wars that “originate within the borders of a country and largely remain isolated as such.”¹³ According to the Geneva Conventions of 1949, civil wars are:

Conflicts . . . which take place in the High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this protocol.¹⁴

In modern civil wars there are often more than two opposing factions that are struggling for control of a state’s government. Since this paper is not concerned with situations that may be labeled as mere uprisings, the important factor for the following examination is that the legitimate government is unable to exercise full control over its citizens because there is a serious division of thought, military might, and power.

12. Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 14, ¶ 228 (June 27) [hereinafter Military and Paramilitary Activities].

13. PATRICK M. REGAN, CIVIL WARS AND FOREIGN POWERS: OUTSIDE INTERVENTION IN INTRASTATE CONFLICT 6 (2000).

14. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), *adopted* June 8, 1977, art. 1, 1125 U.N.T.S. 609, 611 (entered into force Dec. 12, 1978).

B. *Legal Justifications*

The general prohibition on the use of force applies to states as well as regional organizations. In Chapter VII of the Charter, Article 39 expressly states that the Security Council, and not individual states, will determine whether there has been a threat to the peace; when a threat has been established, the Security Council shall take measures to maintain or restore international peace and security.¹⁵ Many states have chosen to justify their actions by reference to the loophole provided by Article 51 and invoke the right of collective self-defense which is triggered by invitation of the victim state.¹⁶ In the absence of a self-defense rationale, the practice of states suggests that multilateral interventions, unlike unilateral ones, still fall within the spirit of the current Charter rules.

Alternatively, states have advanced humanitarian excuses or the threat posed by regional instability as legitimate justifications for intervention. One of the stated purposes expressed in the Charter is that of solving international problems "of an economic, social, cultural or humanitarian character, and promoting and encouraging respect for human rights and for fundamental freedoms"¹⁷ This language might be read in conjunction with Article 2(4)¹⁸ as conveying a broad right of intervention where fundamental human rights violations have occurred. Tesón states: "Considerable authority [exists] for the proposition that the right of humanitarian intervention was a rule of customary law prior to the adoption of the UN Charter."¹⁹ This is still a minority view among the member states of the U.N.²⁰ More importantly, there is no way of get-

15. U.N. CHARTER art. 39. See *supra* note 1 and accompanying text for the text of Article 39.

16. *Id.* art. 51 ("Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.") For examples of states justifying their actions by invoking the right to collective self-defense, see *infra* Part IV.

17. *Id.* art. 1, para. 3 (regarding purpose of achieving international cooperation).

18. See U.N. CHARTER art. 2, para. 4, *supra* note 2.

19. FERNANDO R. TESÓN, HUMANITARIAN INTERVENTION 175 (2d ed. 1997).

20. Cf. Alex de Waal & Rakiya Omaar, *Can Military Intervention Be "Humanitarian"?*, MIDDLE E. REP., Mar.-June 1994, at 4-5 (noting that the U.N. Charter was "drawn up in the context of extreme skepticism about 'humanitarian'").

ting around the fact that the Charter requires that states and regional organizations seek Security Council authorization *prior* to intervening in the domestic affairs of sovereign states.²¹ One of the challenges of this paper is to analyze state practice to the contrary in order to determine if the traditional rule of non-intervention has any capacity to bind states or whether it has become a dead letter.

IV. CASE STUDIES

Intrastate violence, driven by regional and ethnic tensions, is increasingly common in the aftermath of World War II and decolonization.²² Developing nations demand that world powers respect their autonomy and allow them to devise their own solutions to wars raging within their territories. Yet many states find that their inability to contain intrastate conflict exacerbates the depletion of valuable resources and compromises their position in the global community. This resource drain affects not only the countries in which the civil wars occur, but also the states that will eventually be forced to intervene.²³

First, the Note will describe the legal framework within which the intervention in question occurred, as well as the relevant events that preceded and influenced the outcome of each of the military interventions. Second, the Note will attempt to address questions regarding the interventions, such as: What went right or wrong? How is success or failure determined? Is it even possible to assess an intervention in terms of success or failure? How did various U.N. organs respond to the interventions? The case studies will be used to illustrate lessons that the international community should have learned

tarian' justifications for intervention" and the post-1950s refusal of the international community to accept invocations of the principle to justify intervention).

21. See U.N. CHARTER art. 53, para. 1, *supra* note 6 and accompanying text.

22. PATRICK M. REGAN, CIVIL WARS AND FOREIGN POWERS: OUTSIDE INTERVENTION IN INTRASTATE CONFLICT 27-28 (2000).

23. See, e.g., Babafemi Akinrinade, *International Humanitarian Law and the Conflict in Sierra Leone*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 391, 437 (2001) (noting that countries that contributed to the intervention in Sierra Leone, *infra* Section IV.B.3, encouraged peace negotiations in part because of the cost of the operations).

from the interventions. Finally, this section will address the role that regional organizations might play in alleviating intra-state conflict in the event that the Security Council is either unwilling or unable to respond to global crises.

The traditional rule of non-intervention is:

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.²⁴

Yet state jurisprudence is full of cases in which states have freely ignored the principle of non-intervention. If a civil war has progressed beyond that of a purely internal matter and has evolved into a war where outside forces are involved in the conflict, according to customary international law, the victim state then has the right to enlist other states to provide aid.²⁵ Intervention may be lawful if an invitation is extended to either (a) deal with limited internal unrest not rising to the level of civil war; or (b) aid the requesting government in responding to prior interventions carried out in its territory by states or other entities.²⁶ These criteria will be used to examine the following case studies to determine whether the right of self-defense has been invoked properly or whether other principles found in the U.N. Charter may be relevant.

A. *Interventions in Defense of Nationals*

1. *The Belgian and U.S. Intervention in the Democratic Republic of the Congo*

Despite the apparent leadership of Prime Minister Moïse Tshombe, by 1964 a third of the Congo was controlled by a rebel group led by Christopher Gbenye called the Conseil National de Liberation (CNL).²⁷ In early September, Gbenye,

24. See U.N. CHARTER art. 2, para. 4; see also *Military and Paramilitary Activities*, *supra* note 12 ¶ 188.

25. CHRISTINE D. GRAY, *INTERNATIONAL LAW AND THE USE OF FORCE* 57–58 (2000).

26. *Id.*

27. See CONGO (*Léopoldville*).—*End of First Parliament and of Adoula Government*.—M. Tshombe forms Interim “Government of Reconciliation.” 10 KEESING’S CONTEMP. ARCHIVES 20,217, 20,217–18 (Aug. 8–15, 1964); SIMON CHESTERMAN, *JUST WAR OR JUST PEACE?* 66–67 (2001).

with aid from the United Arab Republic (UAR), Algeria, Ghana, the Sudan, and Kenya, captured Stanleyville and proclaimed himself President of a Provisional Revolutionary Government.²⁸ On September 26, the CNL took more than a thousand foreign nationals hostage in Stanleyville and threatened to kill them unless the government agreed to certain concessions.²⁹ Over the next several months, all peaceful overtures made by the U.N., the OAU, the International Red Cross, and individual African heads of state to secure the release of the hostages were unsuccessful.³⁰

In light of the deteriorating military situation and success of the rebel forces, on November 21, 1964, Prime Minister Tshombe invited the American government to provide assistance.³¹ On December 18, he visited Belgium to appeal for further assistance.³² Tshombe had authorized the Belgian government to send a rescue force to evacuate the foreign citizens being held as hostages by the rebels.³³ Belgium was reportedly reluctant initially to increase "technical aid"³⁴ above what it had already been supplying to the Congo. Nevertheless, Belgium and the United States (using military facilities belonging to Great Britain) began a controversial, massive military operation which led to the airdrop of Belgian paratroopers into Stanleyville. Within days, Belgium and the U.S. recaptured Stanleyville from the rebels and secured the release of 1800 European and 300 Congolese hostages. Besides freeing the hostages, the invasion helped the government troops to

28. MARK A. WEISBURD, *USE OF FORCE: THE PRACTICE OF STATES SINCE WORLD WAR II* 266 (1997).

29. CHESTERMAN, *supra* note 27, at 67.

30. WEISBURD, *supra* note 28, at 266.

31. *Id.*

32. CONGO (*Léopoldville*).—*M. Tshombe's Visits to Europe.—Ending of Companies' Rights to Grant Mining Concessions.*, 11 KEESING'S CONTEMP. ARCHIVES 20,613, 20,613 (Feb. 27–Mar. 6, 1965) [hereinafter *M. Tshombe's Visits to Europe*]

33. CONGO (*Léopoldville*).—*Belgian-U.S. Air Operation at Stanleyville and Paulis to Rescue White Hostages Held by Rebels.*, 11 KEESING'S CONTEMP. ARCHIVES 20,561, 20,561 (Feb 6–13, 1965) [hereinafter *Belgian-U.S. Air Operation at Stanleyville and Paulis*].

34. *M. Tshombe's Visits to Europe*, *supra* note 32, at 20,613 ("including the services of 370 Belgian officers and N.C.O.s as advisors to the Congolese National Army").

solidify their positions against the rebels in other areas in the Congo.³⁵

On December 1, 1964, President Kasavubu labeled the humanitarian mission a success. International reaction to the operation was sharply divided, however, with international responses ranging from "outright condemnation in Moscow, Peking, Belgrade, and many African capitals to qualified acceptance in a number of other African capitals and approval in Western countries."³⁶ President Ben Bella of Algeria, Prime Minister Aklilou Habte Wold of Ethiopia, President Nkrumah of Ghana, Mr. Kenyatta of Kenya, President Nyerere of Tanzania, and the government of Tunisia condemned the operation. In addition, the OAU Conciliation Commission met between November 27–28, 1964, and adopted a resolution strongly condemning Britain, Belgium and the U.S. for their involvement in the affairs of the Congo. On December 18, the OAU adopted a resolution (20 in favor, 0 against, with 10 abstentions) officially condemning the intervention.³⁷ The members of the organization felt the intervention was overly hasty and should not have occurred without the consultation of other regional actors in Africa.

The intervention was initially brought to the attention of the Security Council by Afghanistan, Algeria, Cambodia, Indonesia, the Sudan, the UAR, and 15 sub-Saharan African States, all of whom characterized the U.S. and Belgian operation as a flagrant violation of the U.N. Charter. These states, while targeting Belgium and the U.S., also claimed that Algeria, the Sudan, Ghana, the UAR, the People's Republic of China (P.R.C.), and the Soviet Union were illegally intervening in the Congolese conflict.³⁸ The Security Council debated a resolution recommending and requesting that all states refrain from intervening in the domestic affairs of the Congo.³⁹ The twenty-two states attacking the operation denied the legitimacy of the Tshombe government, claimed that the invitation ex-

35. WEISBURD, *supra* note 28, at 266.

36. *Belgian-U.S. Air Operation at Stanleyville and Paulis*, *supra* note 33, at 20,562. African countries not opposing the intervention included Nigeria, Sierra Leone, Togo, and Madagascar. *Id.* at 20,563.

37. *Id.* at 20,566.

38. WEISBURD, *supra* note 28, at 267.

39. Interview with Edward Luck, Director, Columbia Center on International Organization, in New York, N.Y. (Mar. 1, 2002).

tended by it was invalid, and claimed that the intervention was no mere rescue operation, but a calculated plot to further the intervening states' ideological interests in the conflict. This position was supported in the Council by the Soviet Union and Czechoslovakia.⁴⁰

On the other side of the debate, the Belgian, British and U.S. governments all strenuously persisted in their claim that the operation was a rescue operation whose sole purpose was to avert humanitarian catastrophe.⁴¹ In particular, the U.S. advanced three main justifications for its actions: (1) it acted on the basis of a legitimate invitation from the Congolese government; (2) the response conformed with the requirements in the 1949 Geneva Conventions; and (3) the U.S. needed to act to protect its own nationals, as well as the Congolese citizens who were threatened by the conflict.⁴² France, Brazil, the Republic of Congo (R.O.C.), Bolivia, and Norway all supported the U.S. position, stressing the validity of the invitation by the Congolese government.⁴³ Nigeria stated that it believed the invitation was valid and the operation was clearly within the limits imposed by international law.⁴⁴ While expressing sympathy with the humanitarian need for intervention, Morocco reaffirmed the principle of non-intervention in the domestic affairs of states.⁴⁵ Finally, the Central African Republic and Ivory Coast deplored the invasion by the paratroopers but acknowledged the legitimacy of the Tshombe government.⁴⁶

40. WEISBURD, *supra* note 28, at 267.

41. *United States Cooperates with Belgium in Rescue of Hostages from the Congo*, 51 DEP'T ST. BULL. 838, 846 (1964) (claiming U.S. intervention was "for purely humanitarian reasons and with the authorization of the Government of the Congo"); *see also Letter Dated 24 November 1964 from the Permanent Representative of the United States of America Addressed to the President of the Security Council*, U.N. SCOR, 19th Sess., Supp. for Oct.-Dec. 1964, at 187, U.N. Doc. S/6062 (1964) ("The sole purpose . . . was to liberate hostages whose lives were in danger."); *Letter Dated 24 November from the Permanent Representative of Belgium Addressed to the President of the Security Council*, U.N. SCOR, 19th Sess., Supp. for Oct.-Dec. 1964, at 190, U.N. Doc. S/6063 (1964) (Belgium was "forced to take this action in accordance with the rules of international law codified by the Geneva Conventions.")

42. *United States Cooperates with Belgium in Rescue of Hostages from the Congo*, *supra* note 41, at 841.

43. WEISBURD, *supra* note 28, at 267.

44. *Security Council*, 19 INT'L ORG., 331, 347 (1965).

45. *Id.* at 349.

46. WEISBURD, *supra* note 28, at 267.

In response to the crisis, the Security Council adopted Resolution 226.⁴⁷ The resolution called upon all states to “refrain or desist” from any intervention in the domestic affairs of the D.R.C., agree to a cease-fire, and refrain from using mercenaries. The resolution was adopted 10–0, with France abstaining.⁴⁸ Despite the relatively clear wording, both member and non-member states disagreed over the intended targets of the resolution—some felt that the resolution was targeted at China and the U.S.S.R., while others believed the resolution meant that Belgium and the United States should desist.⁴⁹ Notwithstanding assertions that the humanitarian justification was a pretext for other political agendas, the Council chose not to condemn explicitly either the United States or Belgium for the intervention.

Nonetheless, many African countries expressed their general feelings of unease about the intervention. An unidentified African diplomat, quoted by the international press, stated:

[W]e had hoped that independence, U.N. membership, a flag, a Government, a President of the Republic, Ministers, and a small national Army would all give us a human dignity we had not known for centuries But at Stanleyville . . . [w]e were shown that we were not really masters in our own house.⁵⁰

Charges of racism had also been raised during the conflict:⁵¹ Some commentators were concerned that Western powers seemed willing to sacrifice the lives of Black Africans⁵² for those of a comparatively small number of White foreigners,

47. S.C. Res. 226, U.N. SCOR, 21st Sess., 1306th mtg., U.N. Doc. S/RES/226 (1966) (adopted unanimously).

48. *Id.*; see also 1964 U.N.Y.B. 99, U.N. Sales No. 65.I.1.

49. 1964 U.N.Y.B., *supra* note 48, at 100.

50. *Belgian-U.S. Air Operation at Stanleyville and Paulis*, *supra* note 33, at 20,563.

51. See, e.g., U.N. SCOR, 19th Sess., 1170th mtg. at 83–85, U.N. Doc. S/PV.1170 (1964).

52. Thomas M. Franck & Nigel S. Rodley, *After Bangladesh: The Law of Humanitarian Intervention by Military Force*, 67 AM. J. INT'L L. 275, 288–89 (1973). Although 300 Congolese were reportedly saved by the operation, the Congolese military, aided by the Americans and Belgians, proceeded to inflict serious casualties on the rebel forces. WEISBURD, *supra* note 28, at 266–67.

in a country not far removed from its colonial past.⁵³ In addition, many African countries questioned whether Prime Minister Tshombe had actual authority to issue a request for help to areas over which he exercised *de facto* control.⁵⁴

Despite the debate surrounding the legality of the Belgian and U.S. airdrop, neither state was officially sanctioned for its intervention. On the one hand, the Belgian airdrop could be characterized as a simple rescue operation: The United States and Belgium, with an official invitation by the host state, entered the Congo briefly, ensured the release of approximately 2,000 foreign and citizen hostages, and promptly left the country. On the other hand, it must be acknowledged that, whether purposeful or not, the Belgian and U.S. operation changed the status quo in the Congo. The intervention was instrumental in bolstering the supremacy of the Tshombe government, which until that time faced a credible threat from Gbenye and the CNL.

Article 51 of the U.N. Charter states that nothing "shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations."⁵⁵ If the invitation was legitimate, the U.S. and Belgian intervention was legal; the question is whether the right of invitation vested in P.M. Tshombe or in Gbenye, who had been announced President of the newly proclaimed Provisional Revolutionary Government. While the U.S. and Belgium took up the former as bearer of the right, depending on the amount of territory captured by the rebels, this was an arguable assumption of fact. Regardless of who was in fact winning the war at the time of the intervention, it is perhaps doubtful that it would have been carried out at all if a significant number of foreign hostages had not been involved. The lack of Security Council condemnation on the matter may well have been a tacit acknowledgment of this fact.

53. *Belgian-U.S. Air Operation at Stanleyville and Paulis*, *supra* note 33, at 20,563 ("Admittedly a few hundred Whites were in danger. But at Sharpeville the Pretoria Government murdered 400 Blacks at one blow, and no country dropped parachutists. In Angola tens of thousands of Africans have been killed, and nobody makes a move.").

54. ANTONIO TANCA, *FOREIGN ARMED INTERVENTION IN INTERNAL CONFLICT* 158 (1993).

55. U.N. CHARTER, art. 51.

In any event, opinion in the international community was also divided over whether the humanitarian justification was mere pretext for other political objectives. Even if true, this contention is belied by the length of the intervention. While many have argued that the massive air drop of foreign troops altered the territorial integrity and domestic affairs of the D.R.C., the fact that the troops were withdrawn within four days adds much legitimacy to the U.S. and Belgian claims that they acted solely to rescue the hostages.

2. *The U.S. and OAS Intervention in the Dominican Republic*⁵⁶

In September 1963, President Juan Bosch of the Dominican Republic (D.R.) was ousted in a coup. Between 1963 and 1964, various groups attempted to overthrow the new government.⁵⁷ On April 24, 1965, additional fighting erupted when a coalition of citizens and military personnel attempted to return Bosch to power.⁵⁸ After a confusing series of events, the coalition arrested the chief of staff, then had a local civilian radio station report that the current regime had been overthrown with members of the Bosch regime being restored to power. This report was widely believed.⁵⁹ Consequently, a faction of the military opposed to Bosch's return responded with air attacks on the presidential palace and attacked civilians known to support Bosch. The pro-Bosch forces, transformed into a military junta, were unsuccessful in their attempts to regain control and were forced to occupy areas just outside of the city.⁶⁰

The American embassy, reportedly fearing for the safety of its citizens, recommended that the United States dispatch troops to the D.R.⁶¹ U.S. President Lyndon B. Johnson told the American public that the troops were being sent in to pro-

56. For a relevant discussion on the initial unilateral action taken by the United States, see Christopher LeMon, *Unilateral Intervention by Invitation in Civil Wars: The Effective Control Test Tested*, 35 N.Y.U. J. INT'L L. & POL. 741, 762 (2003).

57. ABRAHAM F. LOWENTHAL, *THE DOMINICAN INTERVENTION* 35 (1972); WILLIAM BLUM, *KILLING HOPE: U.S. MILITARY AND CIA INTERVENTIONS SINCE WORLD WAR II* 180 (Common Courage Press 1995) (1986).

58. LOWENTHAL, *supra* note 57, at 61; BLUM, *supra* note 57, at 180–81.

59. LOWENTHAL, *supra* note 57, at 61.

60. *Id.* at 76–77, 96.

61. See BRUCE PALMER, JR., *INTERVENTION IN THE CARIBBEAN* 4–5 (1989).

tect the lives of U.S. citizens and “to prevent the D.R. from becoming ‘a second Cuba.’”⁶² Within ten days of an initial deployment of 500 Marines, a larger force comprising 23,000 U.S. troops arrived in the D.R. Apparently, the mission of these forces, according to their commander, was to prevent a Communist takeover of the D.R.⁶³ Upon arrival, U.S. troops confined the pro-Bosch rebels in a small downtown area of Santo Domingo. At times, the pro-Bosch forces appeared to gain ground, but the U.S. maintained its non-combative stance while attempts were made to resolve the situation through diplomatic means in the OAS.⁶⁴

Whereas the initial U.S. intervention in the Dominican Republic was unilateral, on May 6, 1965, the OAS passed a resolution which authorized the establishment of an Inter-American Peace Force (IAPF) to include troops from six Latin American states.⁶⁵ By May 29, 1965, the troops from Brazil, Costa Rica, El Salvador, Honduras, Nicaragua, and Paraguay had arrived in the Dominican Republic, the American forces were absorbed into the IAPF, and the U.S. ceased all unilateral action. By June 2, all of the decision-making ability regarding the situation in the D.R. had been turned over to an ad-hoc committee established by the OAS’s Foreign Ministers. Between June and September, this committee established a provisional government in the D.R., monitored free elections, and ensured that all remaining IAPF forces were withdrawn quickly.

Most third-states denounced the intervention while affirming the Article 2(4) principle of non-intervention.⁶⁶ Statements made in the General Assembly denounced the unilateral action by the U.S.⁶⁷ The Security Council adopted resolutions calling for a ceasefire.⁶⁸ Only the United Kingdom

62. Joseph B. Treaster, *Twenty Years After Dominican War, Wounds Linger*, N.Y. TIMES, May 1, 1985, at A2.

63. See PALMER, *supra* note 61, at 4–6.

64. BLUM, *supra* note 57, at 181–84.

65. CHESTERMAN, *supra* note 27, at 70–71.

66. See U.N. CHARTER art. 2, para. 4, *supra* note 2.

67. See, e.g., U.N. GAOR, 20th Sess., 1335th mtg. ¶¶ 57–60, U.N. Doc. A/PV.1335 (1965) (Soviet Union); U.N. GAOR, 20th Sess., 1340th mtg. ¶¶ 29, 36–37, U.N. Doc. A/PV.1340 (1965) (Ecuador).

68. See, e.g., S.C. Res. 203, U.N. SCOR, 20th Sess., 1208th mtg., U.N. Doc No. S/RES/203 (1965); S.C. Res. 205, U.N. SCOR, 20th Sess., 1217th mtg.,

expressed full support for the intervention.⁶⁹ In addition, many members of the OAS criticized the United States and made clear that they had not wanted to be drawn into the conflict: "OAS established the IAPF by a bare 2/3 majority vote, including the vote of the junta's representative which was of highly questionable validity It did *not* receive the support of most of the democratic members of the organization."⁷⁰ Despite the criticism, the OAS did join the U.S. in the intervention and called on other states to assist in the mission as well. In the end, the Security Council chose not to adopt a potential resolution condemning the intervention—six out of eleven members of the Security Council voted against it while four abstained.⁷¹

While the change in the government in the Dominican Republic did lead to general instability and civil conflict, it is debatable whether a threat to international peace and security actually existed. Although the Johnson Administration first claimed that the intervention was primarily intended to protect U.S. nationals and other foreigners,⁷² this position was soon abandoned. Interviews of native Dominicans (albeit twenty years after the events) suggest that many felt the danger to the several hundred U.S. citizens in the capital was minimal and that the "smattering of virtually leaderless Dominican Communists posed no serious threat to anyone."⁷³ Similarly, the *New York Times* reported that: "Unlike the Grenadians, [the Dominicans] are not overwhelmingly grateful for the American intervention."⁷⁴ Taken together, these statements suggest that the originally articulated justification for the U.S. intervention in the D.R. was a mere pretext for U.S. concern over the maintenance of its sphere of influence.

Yet the fact remains that enough members of OAS voted to support the intervention; standing alone, the decision to re-

U.N. Doc. No. S/RES/205 (1965); *see generally* 1965 U.N.Y.B. 140–52, U.N. Sales No. 66.I.1 (summarizing the Security Council's activity regarding the situation in the Dominican Republic).

69. 1965 U.N.Y.B., *supra* note 68, at 142.

70. James P. Rowles, *The United States, the OAS, and the Dilemma of the Undesirable Regime*, 13 (Supp.) GA. J. INT'L & COMP. L. 385, 401 (1983).

71. *See* 1965 U.N.Y.B., *supra* note 68, at 147.

72. CHESTERMAN, *supra* note 27, at 70.

73. Treaster, *supra* note 62, at A2.

74. *Id.*

inforce the U.S. added a measure of legitimacy to the mission. Thus, the intervention, widely condemned when it was still characterized as a unilateral undertaking, gained more support after being transformed into a multilateral operation. Had the U.S. not attempted to synchronize its efforts with that of a regional organization, the debates over the legality of the intervention in the Security Council likely may have led to a more strongly-worded resolution.

3. *The French and Belgian Intervention in Zaire*

In May 1978, rebels associated with the Front Nationale de la Liberation du Congo (FLNC) entered Zaire from neighboring Angola and Zambia and gained control of the copper-mining center of Kolwezi. Within ten days of the takeover, the rebel troops had murdered 200 resident foreigners.⁷⁵ President Mobutu and the Zairean foreign minister immediately requested assistance from France, Belgium, the United States, and China. France and Belgium provided the main supply of troops in the operation and the U.S. provided logistical support.⁷⁶

French troops arrived on May 19th, and Belgian troops followed on the 20th; within a day the multilateral forces were able to regain control of Kolwezi and evacuate the majority of the hostages.⁷⁷ The outside forces then immediately implemented phased withdrawals from Zaire. Belgium withdrew on May 22nd, and France followed suit on the 25th. On June 4th, Moroccan troops arrived (via planes provided by the United States) and replaced the departing Belgian and French troops. Several other states also participated in the intervention: Angola agreed to help disarm the FNLC, and Egypt, Senegal, Sudan, Ivory Coast, Togo, and Gabon agreed to send troops to fill the void left by the departure of the Europeans.⁷⁸

The French and Belgian governments gave two different reasons for their intervention. According to the French presi-

75. TANCA, *supra* note 54, at 170.

76. *Id.* at 171.

77. However, in contrast to the Belgian forces who assisted solely in the rescue operation, French forces actively assisted the government of Zaire in restoring law and order in the province. See *ZAIRE—Second Invasion of Shaba Province by Rebels—Harassment and Murder of Europeans*, 24 KEESENG'S CONTEMP. ARCHIVES, 29,125, 29,125–31 (Aug. 11, 1978).

78. See *id.* at 29,127, 29,130.

dent, troops were sent in at the invitation of Zaire with the aim of "protecting the French and foreign residents of Kolwezi and re-establishing security there."⁷⁹ In contrast, the Belgian Prime Minister Léo Tindemans stated that "the French operation is quite different in character from the Belgian operation," whose purpose was to "bring help to the European *and local* population."⁸⁰ Both countries also articulated a number of other reasons, including: (1) the receipt of an invitation from the legitimate government of Zaire, conducted within the strict confines of international law; (2) the participation in only actions taken on a defensive basis to guarantee security; (3) the fulfillment of a contractual obligation with a friendly country (referring to a treaty that had been negotiated but not yet passed); (4) the consent of the Zairean government; and (5) the request of Zairean government for logistical support (from the United States).⁸¹

The intervening states had strategic interests, beyond the rescue of their nationals, implicated if Zaire fell to the rebels. For example, the United States wished to improve its relations with Zaire;⁸² France and Belgium both had strong economic interests in the region;⁸³ and Morocco and Egypt reportedly feared the implications of Communist activity in Africa.⁸⁴

The 1978 intervention in Zaire was not addressed by any U.N. organ.⁸⁵ U.N. silence, viewed in conjunction with the significant troop contributions from multilateral actors, might indicate general acceptance of the intervention. Yet some members of the international community did object to the intervention. The Soviet Union strongly opposed it and stated that the defense of protecting one's nationals was not a valid justification. While agreeing that Zaire had the right to invoke the right of collective self-defense, President Nyerere of Tanzania

79. *See id.* at 29,126.

80. *Id.* (emphasis added).

81. TANCA, *supra* note 54, at 171.

82. Stephen R. Weissman, *CIA Covert Action in Zaire and Angola: Patterns and Consequences*, 94 POL. SCI. Q. 263, 274 (1979).

83. Michael G. Schatzberg, *Military Intervention and the Myth of Collective Security: The Case of Zaire*, 27 J. MOD. AFR. STUD. 315, 332-33 (1989).

84. *See id.* at 332. *Cf.* Olajide Aluko, *African Response to External Intervention in African since Angola*, 80 AFR. AFF. 159, 168-69 (1981) (noting Morocco and Egypt's support for Mobutu in the 1978 intervention).

85. WEISBURD, *supra* note 28, at 278.

felt that military aid should not be used to further the purposes of a corrupt government, especially at the expense of the citizens who did not support the government. In a meeting of the OAU Council of Ministers, Mozambique and Nigeria also criticized the operation—Nigeria denounced what it termed “gunboat diplomacy and neocolonialism.” The OAU Assembly decried Zaire’s signing of military pacts with non-African countries.⁸⁶

Overall however, the reaction of the international community to the French and Belgian intervention was muted. The criticisms that did surface were significantly less strident than those regarding the intervention by the U.S. and Belgium in the Congo in 1964, or the 1963 intervention in the Dominican Republic.

4. *Lessons Learned*⁸⁷

One of the major conclusions of this paper is that multilateral interventions are preferable to unilateral operations because the broad-based participation lends a measure of legitimacy that is lacking when states act alone. Since disagreement exists as to whether the U.S. and OAS intervention in the Dominican Republic can be truly labeled “multilateral,” the question of what it means for an intervention to be classified as such would seem a basic first step in assessing the legitimacy of the intervention. A number of questions arise: (a) Do participating states have to contribute the same number of troops?; (b) What if one state significantly dominates the intervention?; and (c) What if one state contributes troops but another simply lends “logistical” or “technical” aid in the form of transport, training, or supervision? Do these kinds of doubts detract from the classification of an intervention as a multilateral undertaking? Or is it enough simply to have a “meeting of the minds”—an agreement by states jointly to expend resources and share control of a common enterprise? While these are all interesting questions, the fact is that the Charter rules governing the prohibition on aggression are indeterminate and do not yield easy answers.

86. TANCA, *supra* note 54, at 171.

87. An attempt to draw serious lessons on the basis of three interventions necessarily enters dangerous territory.

Traditionally, to justify recourse to Article 51 collective self-defense states must claim that they have been the victim of an armed attack. Yet the truth or falsity of such a claim is often hard to determine.⁸⁸ In addition, states may argue that intervention to protect one's nationals derives from customary international law that predates the Charter, or that this type of intervention is justified only in the case of an armed attack. Without over-emphasizing the fact that there was no explicit condemnation of either state, one tentative lesson that can be drawn from the intervention in the Congo is that the international community was more willing to sanction the use of force when the foreign intervenors acted in a limited way to evacuate or protect their nationals. At the same time, the reaction to the intervention also demonstrated that many African nations remain extremely sensitive to foreign interventions that are tinged with colonial overtones. The cases suggest that multi-lateral interventions that adhere to coherent, consistent, and clear standards stand a better chance of success than those that do not.

The classification of an intervention as either an enforcement or peacekeeping mission will have a major effect upon whether the intervention is perceived as legitimate or legal. When the OAS was originally created, its founding charter did not make any express provision for either enforcement or peacekeeping action. Regional and sub-regional organizations that lack authority to conduct enforcement operations have become increasingly aware, however, of the possibilities that their own peacekeeping efforts have for the settlement of intrastate conflict.⁸⁹

88. GRAY, *supra* note 25, at 121–22 (noting that cases involving the claims of collective self-defense typically turn on the factual question of whether there was an armed conflict).

89. See Charter of the Organization of American States, Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3; David D. Jividen, *It Takes a Region: A Proposal for an Alternative Regional Approach to UN Collective Force Humanitarian Intervention*, 10 U.S. A.F. ACAD. J. LEGAL STUD. 109, 125–26 (1999–2000); Sylvester Ekundayo Rowe, *ECOMOG: A Model for African Peace-Keeping*, AFR. LAW TODAY, at 3, Oct. 1998, available at <http://allafrica.com>. The scope of peacekeeping is expanding to fit the challenges posed by intrastate conflict: "Peacekeeping for both the United Nations and ECOWAS now involves such activities such as observation and verification of cease-fire agreements, security/protection for refugees and humanitarian relief workers, demobilization

A related consequence is that these organizations have begun to view their mandates as encompassing broader responsibilities. Despite the seeming conflict between mandate and practice, the international community has not spent much time inquiring into whether organizations like the OAS have power under their own constitutions to engage in peacekeeping or enforcement activities but have focused instead on the requirements of international law as stated by the U.N. Charter. "When regional organizations have engaged in the use of force the legality of such action has been assessed by the rest of the world not in terms of the organization's own constitution but rather in terms of the UN Charter and general international law."⁹⁰ While it may be tempting to read too much into the absence of debate on the topic, the shift in focus may reflect a shared understanding that regional organizations are viewed increasingly as legitimate mechanisms to occupy the field of both peacekeeping *and* enforcement actions in intra-state conflicts.

The French and Belgian intervention in Zaire bears some resemblance to the intervention by Belgium and the United States in the Congo in 1964 and the intervention in the D.R. in 1978. In those cases, the interventionists defended their actions by resort to a perceived right to protect their nationals. Unlike the situations in the Congo or the D.R., however, the threat posed to the foreign nationals in Zaire was substantial. In addition, the fact that the intervention in Zaire garnered significant multilateral military support from a host of states likely increased its legitimacy in the eyes of still other states. Based on these studies, one might infer that interventions to rescue nationals will face less opposition if the intervening forces have broad multilateral support, act to withdraw their troops immediately, and do not attempt to change the status quo within the target state.

and disarmament of combatants, and observation of democratic political processes in the form of elections and referenda." *Id.*

90. GRAY, *supra* note 25, at 209.

B. *Interventions for Humanitarian and Regional Stability Purposes*

1. *The ECOMOG Intervention in Liberia*

In December 1989, Charles Taylor, a former minister under the ruling regime of President Samuel Doe of Liberia,⁹¹ organized and led a rebel force in Côte d'Ivoire with the hope of unseating Doe. Taylor's actions precipitated the outbreak of civil war in Liberia between his National Patriotic Front (NPFL) and Doe's Armed Forces of Liberia (AFL).⁹² By July 1990, the NPFL appeared close to taking control, but a splinter group of the NPFL, the Independent National Patriotic Front of Liberia ("INPFL"), led by Prince Yormie Johnson, added yet another dimension to the civil war.⁹³ By August, various ethnic groups were fighting each other, and ordinary civilians increasingly became the targets of their attacks. Approximately 5,000 deaths were reported, and another 500,000 people fled the country.⁹⁴ Liberia reported that over a million citizens had been displaced, equaling roughly sixty percent of the Liberian population.⁹⁵

In response to the burgeoning crisis, the Economic Community of West African States (ECOWAS) decided to send a peacekeeping force to Liberia. The organization called on "all warring parties to observe an immediate cease-fire," and gave its military arm, the Economic Community of West African States Monitoring Group (ECOMOG), the power to keep the peace, restore law and order, and insure that the cease-fire was respected.⁹⁶ The vast majority of the ECOMOG force came from Nigeria, with smaller contingents also coming from

91. Doe ousted President William R. Tolbert Jr. in a military coup on April 12, 1980. MARK HUBAND, *THE LIBERIAN CIVIL WAR 14-15* (1998).

92. CHESTERMAN, *supra* note 27, at 135.

93. *Id.*

94. *Id.*; *LIBERIA: Civil War—Sending of ECOWAS Force—Large-scale Casualties*, 36 KEESING'S REC. OF WORLD EVENTS 37,644, 37,644 (1990) [hereinafter *LIBERIA—Civil War*]. This figure includes 300,000 persons who fled to Guinea, 120,000 to Côte d'Ivoire, and 80,000 to Sierra Leone. *LIBERIA—Civil War, supra*, at 37,644.

95. CHESTERMAN, *supra* note 27, at 135; *LIBERIA—Civil War, supra* note 94, at 37,644.

96. CHESTERMAN, *supra* note 27, at 135.

Ghana, the Gambia, Guinea, and Sierra Leone.⁹⁷ Within two weeks all ECOMOG troops had arrived in Monrovia, where they were almost immediately confronted by the NPFL.⁹⁸ Nevertheless, ECOMOG forces were able to gain control of part of Monrovia by September. By November 1990, a cease-fire had been signed. The agreement was subsequently violated, and the fighting continued unabated.⁹⁹ The Yamoussoukro IV Accords, signed on October 30, 1991, allowed ECOMOG to “confi[n]e and disar[m]” the belligerent forces.¹⁰⁰ Four years later on December 28, 1994, perhaps exhausted by the endless conflict, the groups agreed to sign a cease-fire agreement. Unlike the previous cease-fire, this agreement was observed by all parties. Within two weeks, the installation of a temporary government, the Council of State, had been completed. After another seven weeks had passed, the demobilization process had begun. Within 21 weeks, preparations for holding elections had begun, and after 42 weeks elections were held.¹⁰¹

ECOMOG’s essential function was to act as a buffer between the various armed groups.¹⁰² The question is whether ECOMOG remained true to this mandate or whether its actions crossed the line from peacekeeping to enforcement action. Though ECOWAS sought U.N. approval for its operations prior to commencing them,¹⁰³ ECOMOG did not have the consent of either of the Liberian factions, and had no basis

97. *Id.*; U.N. SCOR, *Ninth Progress Report of the Secretary-General*, 50th Sess., U.N. Doc. S/1995/158 (1995).

98. CHESTERMAN, *supra* note 27, at 135.

99. HUMAN RIGHTS WATCH, *HUMAN RIGHTS WATCH WORLD REPORT 1993* 20.

100. *Letter Dated 28 October 1992 from the Permanent Representative of Benin to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 47th Sess., U.N. Doc. S/24735 (1992).

101. See ADEKEYE ADEBAJO, *LIBERIA’S CIVIL WAR: NIGERIA, ECOMOG, AND REGIONAL SECURITY IN WEST AFRICA* 162 (2002).

102. See *supra* text accompanying note 100; Rowe, *supra* note 89, at 3. *But see* GRAY, *supra* note 25, at 217 (noting “some ambiguity as to whether the role of the force was simply to act as a buffer between opposing forces or whether it was to help the government that issued the invitation to defeat the opposition”).

103. *Letter Dated 9 August 1990 from the Permanent Representative of Nigeria to the United Nations Addressed to the Secretary-General*, U.N. SCOR, 45th Sess., U.N. Doc. S/21485 (1990) (forwarding letter statement of Dr. Rilwanu Lukman, Nigerian Minister of External Affairs, requesting “moral support” of the United Nations for ECOWAS actions).

under the ECOWAS constitution for its operation.¹⁰⁴ Though the Liberian government had requested U.N. assistance in June 1990, the Security Council did not become involved in the conflict until January 1991—at least five months after ECOMOG entered Liberia.¹⁰⁵ In fact, the U.N.'s silence as to the legal basis for ECOMOG action in both the Security Council statements¹⁰⁶ and in Security Council resolutions¹⁰⁷ was profound. According to Gray, “the legal basis for the ECOMOG operation was not much discussed by those involved or by the UN. Little attention was paid to the legality of the action under ECOMOG’s own mandate and under its constitution.”¹⁰⁸

In November 1992, with little debate, the Council passed Resolution 788 and found that: “the deterioration of the situation in Liberia constitutes a threat to international peace and security, and particularly in West Africa as a whole.”¹⁰⁹ In this and two succeeding documents, the Security Council gave explicit retroactive approval to the ECOWAS/ECOMOG operation: “*Welcoming*” ECOWAS for its attempts to bring about peace in Liberia, “welcoming” OAU support and endorsement of these actions, and “commending” African states contributing troops to ECOMOG.¹¹⁰

104. CHESTERMAN, *supra* note 27, at 136.

105. *Id.*; U.N. SCOR, 46th Sess., 2974th mtg. at 3, U.N. Doc. S/PV.2974 (1991). Speaking on behalf of the Council members, the President of the Security Council “commend[ed] the efforts made by the ECOWAS Heads of State and Government to promote peace and normalcy in Liberia . . . and call[ed] upon the parties to the conflict in Liberia to continue to respect the cease-fire agreement . . .” U.N. SCOR, 46th Sess., 2974th mtg. at 9, U.N. Doc. S/PV.2974 (1991).

106. *See id.* at 9; *see also Note by the President of the Security Council*, U.N. SCOR, 47th Sess., 3071st mtg., U.N. Doc. S/23886 (1992).

107. *See* S.C. Res. 788, U.N. SCOR, 47th Sess., 3138th mtg., U.N. Doc. S/RES/788 (1992) (adopted unanimously); *see also* S.C. Res. 813, U.N. SCOR, 48th Sess., 3187th mtg., U.N. Doc. S/RES/813 (1993) (adopted unanimously); S.C. Res. 856, U.N. SCOR, 48th Sess., 3263rd mtg., U.N. Doc. S/RES/856 (1993); S.C. Res. 866, U.N. SCOR, 48th Sess., 3281st mtg., U.N. Doc. S/RES/866 (1993).

108. GRAY, *supra* note 25, at 212.

109. S.C. Res. 788, *supra* note 107.

110. *Id.*; *see* S.C. Res. 813, *supra* note 107; S.C. Res. 1116, U.N. SCOR, 52d Sess., 3793d mtg., U.N. Doc. S/RES/1116 (1997); *see also Note by the President of the Security Council*, U.N. SCOR, 48th Sess., 3233d mtg., U.N. Doc. S/25918

In Resolution 788 the Council specifically referred to Chapter VIII of the U.N. Charter and recalled Article 52's broad support for the work of regional organizations in maintaining international peace and security consistent with the purposes and principles of the U.N. In addition, the Security Council: (1) deplored the attacks made against UNOMIL and ECOMOG personnel; (2) regretted "that sufficient financial support . . . for ECOMOG troops [was] not yet forthcoming;"¹¹¹ and (3) gave ECOWAS the sole exemption from its general embargo on all deliveries of weapons and military equipment to Liberia.¹¹²

Despite the lack of prior authorization from the Security Council, many states supported ECOMOG's intervention. Zimbabwe, Botswana, Egypt, and Zambia expressed their support by contributing troops to the peacekeeping force.¹¹³ The United States also supported the ECOMOG action.¹¹⁴ Yet the states that continued to support the NPFL—Burkina Faso and Ivory Coast were allegedly in this camp in 1992—suggested that ECOMOG's reasons for involvement in the conflict were not as altruistic as they appeared.¹¹⁵

2. *The U.S. and British Intervention in Iraq on Behalf of the Kurdish Population*

The Kurds are largely Sunni/Muslim—distinct from Turks and Arabs and related to Iranians—but are still divided tribally, geographically, politically, linguistically, and ideologically. They comprise significant minority populations in Turkey, Iran, Iraq, and Syria.¹¹⁶ For years the Kurds have tried to

(1993) ("The Council remains firmly supportive of the efforts of the ECOWAS and the Secretary-General to bring peace to Liberia.")

111. See *Statement by the President of the Security Council*, 54th Sess., 3404th mtg., U.N. Doc. S/PRST/1994/33 (1994); see also U.N. SCOR, *Sixth Progress Report of the Secretary General On The United Nations Observer Mission In Liberia*, 49th Sess., U.N. Doc. S/1994/1006 (1994).

112. S.C. Res. 788, *supra* note 107.

113. Peter da Costa, *Liberia: Mediators Hold Breath on Ceasefire Agreement*, Inter Press Service, July 26, 1993, 1993 WL 2538187.

114. *Liberia: U.S. Insists It Backs Peacekeeping Force*, INTER PRESS SERVICE, Nov. 12, 1992, 1992 WL 2485003.

115. *Id.*

116. See Michael M. Gunter, *The Kurdish Question and International Law*, in *THE KURDISH QUESTION AND INTERNATIONAL LAW: AN ANALYSIS OF THE LEGAL RIGHTS OF THE KURDISH PEOPLE* 22, 22 (Mohammed M.A. Ahmed & Michael

gain a measure of recognition and autonomy in the international community.¹¹⁷ By and large they have not been able to garner much support; most of their rebellions have failed. In retaliation, Saddam Hussein carried out a systematic campaign in 1988, called "The Anfal," to exterminate the Kurds.¹¹⁸ Iraqi troops killed over 100,000 Kurdish men, women, and children.¹¹⁹ In March 1988, Iraqi air forces reportedly attacked the city of Halabja with chemical weapons.¹²⁰ In August 1988, after the ceasefire agreement in the Iran-Iraq war was concluded, more villages were attacked with chemical weapons and more unarmed civilians were killed.¹²¹ Approximately 1.5 million Iraqi Kurds were forced to flee to Iran and Turkey despite desperate weather conditions.¹²² Iraq's chemical weapon campaign of the 1980s was denounced but not officially sanctioned by the international community.¹²³ Regional organizations that did attempt to respond to the humanitarian crisis were stymied by indecision, conflict, and lack of agreement.¹²⁴

In March 1991, the Arab League failed to issue any condemnation of the treatment of the Kurds. Similarly, the Gulf Cooperation Council condemned Iraq's invasion of Kuwait in August 1990 but failed to take any significant role in the Kurdish crisis.¹²⁵ Perhaps hoping to capitalize on Saddam Hussein's defeat in the Gulf War, the Iraqi Kurdish population led another uprising in the northern areas of Iraq in the same year. Saddam Hussein again moved to suppress the uprising. Turkish officials estimated that one million Iraqi Kurds might

M. Gunter eds., 2000). Rough estimates postulate that there are approximately 10 to 12 million Kurds living in Turkey, 6 million in Iran, 3.5 to 4 million in Iraq, and 800,000 in Syria. *Id.*

117. See Kanan Makiya, *The Anfal: Uncovering an Iraqi Campaign to Exterminate the Kurds*, HARPER'S, May 1992, at 53, 54.

118. See *id.* at 53, 58.

119. See *id.* at 58-59.

120. STAFF OF SENATE COMM. ON FOREIGN REL., 100TH CONG., CHEMICAL WEAPONS USE IN KURDISTAN: IRAQ'S FINAL OFFENSIVE 30 (Comm. Print 1988).

121. See *id.* at 11-31 (providing a narrative constructed from eyewitness accounts of Kurdish refugees).

122. See Gunter, *supra* note 116, at 35-36.

123. See Jane E. Stromseth, *Iraq's Repression of Its Civilian Population: Collective Responses and Continuing Challenges*, in ENFORCING RESTRAINT, *supra* note 11, at 77, 81.

124. See *id.* at 84.

125. See *id.*

flee,¹²⁶ and Iran counted 500,000 refugees in early April alone. Both states agreed that the refugee flows constituted a threat to regional security and demanded that the Security Council respond to the crisis.¹²⁷ Faced with these increasing complaints regarding the cross-border refugee flows caused by Iraqi repression, the United States and its Allies initiated Operation Provide Comfort. The operation established no-fly zones in order to encourage the return of the displaced Kurdish population. A coalition of thirteen different states participated in the rescue operation.

The U.N. response to Iraq's treatment of its Kurdish population was embodied in Resolution 688, which was adopted on April 5, 1991.¹²⁸ The Security Council first reaffirmed the principle of non-intervention: All states should respect the sovereignty and territorial integrity of Iraq and all states in the region. The Council then stated that the consequences of Iraqi repression—the massive outflow of refugees into neighboring territories—constituted a threat to international peace and security:

Gravely concerned by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish-populated areas, which led to a massive flow of refugees towards and across international frontiers and to cross-border incursions which threaten international peace and security in the region, . . .¹²⁹

Condemns the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish-populated areas, the consequences of which threaten international peace and security in the region¹³⁰

126. See U.N. SCOR, 46th Sess., 2982nd mtg. at 6, U.N. Doc. S/PV.2982 (1991) (remarks of Mr. Askin, Turkey).

127. See *id.* at 6–8 (remarks of Mr. Askin, Turkey); *id.* at 13–15 (remarks of Mr. Kharrazi, Islamic Republic of Iran).

128. S.C. Res. 688, U.N. SCOR, 46th Sess., 2982nd mtg., U.N. Doc. S/RES/688 (1991). Austria, Belgium, Cote d'Ivoire, Ecuador, France, Romania, the Soviet Union, the United Kingdom, and the United States voted in favor of the resolution; voting against were Cuba, Yemen, and Zimbabwe. *Id.* China and India abstained. *Id.*

129. *Id.* ¶ 3.

130. *Id.* ¶ 1.

The resolution then demanded an immediate end to the repression and insisted that Iraq open its borders to international humanitarian aid for the Kurds in northern Iraq. What is most interesting about the resolution is that though it demanded that Iraq cease its repression and allow access to international humanitarian organizations, it was not passed under Chapter VII. Consequently, there was no authorization for the use of force to protect the Kurds and Shiite Muslims. The Security Council resolution was thus very limited in its scope; it only established the existence of a threat to the peace due to the flow of refugees streaming across Iraq's borders into Turkey and Iran.

Between December 1991 and 1994, debates in the General Assembly tracked the concerns and conclusions of the Security Council. A series of resolutions detailed the alleged ongoing human rights abuses conducted by the Iraqi government.¹³¹ Resolution 46/134 first set out the obligations that Iraq, as party to several international agreements regarding human rights, such as the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, was violating. The resolution then described the abuses allegedly being committed by Iraq against its citizens: Arbitrary arrests and detentions, disappearances, extrajudicial killings, summary executions, use of persons as "human shields," the use of chemical weapons, the forced displacement of thousands, and systematic torture were

131. See, e.g., G.A. Res. 47/145, U.N. GAOR, 47th Sess., ¶ 9, U.N. Doc. A/RES/47/145 (1992) ("express[ing] special alarm at all internal embargoes, which prevent the equitable enjoyment of basic foodstuffs and medical supplies . . ."); see also G.A. Res. 48/144, U.N. GAOR, 48th Sess., ¶ 2, U.N. Doc. A/RES/48/144 (1993) ("[e]xpress[ing] its strong condemnation of . . . [s]ummary and arbitrary executions, orchestrated mass executions and burials, extrajudicial killings, including political killings, in particular in the northern region of Iraq, in southern Shia centres and in the southern marshes . . ."); G.A. Res. 49/203, U.N. GAOR, 49th Sess., ¶ 2, U.N. Doc. A/RES/49/203 (1994) ("[e]xpress[ing] its strong condemnation of . . . [t]he enactment and implementation of recent decrees prescribing cruel and unusual punishment, namely, mutilation as a penalty for certain offenses and the abuse and diversion of medical care services for the purposes of such legalized mutilations . . .").

all part of a “general structured programme of repression aimed at quelling opposition.”¹³²

The United States, the U.K., and France all relied upon these resolutions as implied support for their establishment of safe havens for the Kurds within Iraq. However, Resolution 688 turned out to be one of the most controversial and least supported of all the resolutions immediately following the Gulf War. A few states, such as Romania and Zaire, commented that the resolution seemed to completely disregard Article 2(7) of the U.N. Charter.¹³³ On the other hand, the intervention by the Allies was seemingly legitimated by the U.N.’s decision to take over responsibility for the operation.¹³⁴

Again, Resolution 688 is almost more significant for the things that it failed to do than for the things it actually accomplished: (1) It did not expressly authorize the use of military force to protect Iraqi Kurds and Shiites from Saddam Hussein (in fact, earlier debates in the Security Council demonstrate that military force to this end was not contemplated); (2) the resolution did not state a position on the merits of the Kurdish struggle for solidarity; and (3) the resolution did not require the consent of the host country, as was the usual practice, before mandating that Iraq allow humanitarian monitoring organizations to enter the country.¹³⁵ Realizing that the resolution provided minimal authorization for the Allied Operation, U.N. Secretary-General Perez de Cuellar expressed reservations about the legality of the operation absent explicit Security Council Authorization.¹³⁶

The Allies’ decision to act notwithstanding the limits of Resolution 688 was significant because it demonstrated some of the underlying motivations for the intervention. The Allied decision to intervene was likely based on considerations beyond the looming humanitarian catastrophe, such as concerns for strategic interests implicated in the region and a sense of corporate responsibility for the Gulf War. On the other hand, the intervention on behalf of the Kurds might suggest that the

132. *Situation of Human Rights in Iraq*, G.A. Res. 46/134, U.N. GAOR, 46th Sess., ¶ 2, U.N. Doc. A/RES/46/134 (1991).

133. TANCA, *supra* note 54, at 187.

134. *See id.*

135. *See* Stromseth, *supra* note 123, at 88–89.

136. *See* Patrick E. Tyler, *U.S. Scouting Refugee Sites Well Inside Iraq’s Borders, Aiming to Lure Kurds Home*, N.Y. TIMES, Apr. 18, 1991, at A1.

international community has become more willing to respond to a state's repression of its own citizens, particularly when the transboundary effects of the conflict spill into neighboring regions.

3. *The ECOMOG Intervention in Sierra Leone*

In March 1991, fighters of the Revolutionary United Front (RUF) attempted to overthrow the government of Sierra Leone. The rebels launched their war from the east of the country near the Liberian border where ongoing conflict had already been threatening to spill over into Sierra Leone. Despite a change in the government and the election of Ahmed Kabbah in 1996, the attacks from the RUF continued. Then, in May 1997 the Armed Forces Revolutionary Committee (AFRC) overthrew Kabbah's government and invited the rebels to join the military junta.¹³⁷ President Kabbah fled to Guinea, where he subsequently appealed to Nigeria and other countries to intervene on his behalf.¹³⁸

In response to the crisis, the Organization of African Unity (OAU) unanimously voted to condemn the coup. The OAU then urged Sierra Leone's regional neighbors to "take all necessary measures" to return President Kabbah to office.¹³⁹ The New York Times reported that: "A West African force led by Nigeria went on the offensive today to put down an eight-

137. See EARL CONTEH-MORGAN & MAC DIXON-FYLE, *SIERRA LEONE AT THE END OF THE TWENTIETH CENTURY: HISTORY, POLITICS, AND SOCIETY* 126-27, 145-49 (1999).

138. Howard W. French, *Nigerians Fire on Rebels Who Seized Sierra Leone*, N.Y. TIMES, June 3, 1997, at A10. At the time of the coup, Nigerian forces were already present in Sierra Leone to aid the government in responding to the instability emanating from the neighboring war in Liberia. See *SIERRA LEONE: Repercussions of Liberian Civil War*, KEESING'S REC. OF WORLD EVENTS, 38,136, 38,136 (1991). Nigerian involvement was viewed as suspect from the beginning:

Nigeria, the leading troop and financial contributor to the peacekeeping group, was being ruled by an illegal military regime under General Sani Abacha, and was under suspension from the United Nations for its human rights violations. ECOMOG's operations in Sierra Leone, unfortunately became entangled in perceptions of Nigeria's internal politics, and in the "big power" syndrome associated with that country's foreign policy.

Rowe, *supra* note 89, at 1.

139. CHESTERMAN, *supra* note 27, at 155.

day old military coup in Sierra Leone, sending ships, planes and troops into action against rebel targets in Freetown, the capital."¹⁴⁰ On October 24, 1997, after five months of fighting, the junta and an ECOWAS mediation committee signed an agreement in Conakry, Guinea which was to restore constitutional order.¹⁴¹ Although Kabbah was eventually returned to government, the fighting continued. In 1998, the RUF, with its allies, began another offensive aimed at entering Freetown. Ultimately the rebels succeeded, and by January 1999 they had taken over part of the city.¹⁴²

On January 7, 1999, ECOMOG conducted an aerial bombing raid on Freetown. The group justified its offensive by asserting the need to enforce earlier-imposed sanctions.¹⁴³ By the end of the month, the ECOMOG offensive was successful, and the organization managed to dislodge the rebels from Freetown. Amid continued violence, peace negotiations between President Kabbah and Foday Sankoh, leader of the RUF, started and stopped several times between February and April. On April 18, the U.N. flew Sankoh to Lomé to discuss peace proposals.¹⁴⁴ By July 7, the government and the RUF had signed an agreement that would integrate members of the RUF into the government and disarm, demobilize, and reintegrate the combatants to end hostilities.¹⁴⁵

Sierra Leone's citizens' reactions to the intervention varied. While many civilians were happy to be able to return home, the New York Times reported that thousands of young Sierra Leonians converged in the streets to protest the intervention.¹⁴⁶ Much of the criticism focused on the unequal composition of the ECOMOG forces: Many citizens expressed

140. French, *supra* note 138, at A10.

141. *SIERRA LEONE: Clashes Between Government and Intervention Force*, 44 KEESING'S REC. OF WORLD EVENTS 41,992, 41,992 (1998). See also Telephone interview with Sylvester E. Rowe, Ambassador, Deputy Permanent Representative for Political Affairs to the United Nations (Mar. 27, 2002).

142. *SIERRA LEONE: Intensification of Fighting*, 44 KEESING'S REC. OF WORLD EVENTS 42,659, 42,659 (Dec. 1998); *SIERRA LEONE: Rebel Invasion of Capital*, 45 KEESING'S REC. OF WORLD EVENTS 42,708, 42,708 (Jan. 1999).

143. *SIERRA LEONE: Clashes Between Government and Intervention Force*, *supra* note 141, at 41,992.

144. *SIERRA LEONE: Violent Backdrop to Peace Process*, 45 KEESING'S REC. OF WORLD EVENTS 42,877, 42,877 (April 1999).

145. Telephone interview with Sylvester E. Rowe, *supra* note 141.

146. French, *supra* note 138, at A10.

distrust of Nigeria's motivations for involvement in the conflict. For example, Abbas Bundu, a former foreign minister of Sierra Leone told the BBC: "West Africans would expect Nigerians to implement democracy in their own country first."¹⁴⁷ International reaction to the 1997 coup was also mixed.

According to media commentators at the time, "Nigeria's offensive enjoys the apparent if not explicit support of the Organization of African Unity and the association of Britain and its former colonies known as the Commonwealth."¹⁴⁸ In the first Security Council mention of the intervention, the Council did not authorize the use of force in Sierra Leone but merely expressed concern.¹⁴⁹ The Security Council eventually voted to give explicit retroactive approval for ECOMOG's intervention. On October 8, 1997, the Security Council adopted Resolution 1132, which did three important things: (1) demanded that the military junta relinquish power in favor of a democratically elected government; (2) determined that a Chapter VII threat to international peace and security did exist; and (3) expressly authorized ECOWAS, under Chapter VIII, to cut the AFRC off from foreign supplies of war "*matériel*."¹⁵⁰ The last provision could be interpreted as implicit authorization for ECOWAS to use military force. Furthermore, on April 17, 1998, the Council adopted Resolution 1162 in which it: "*Commends* the Economic Community of West African States and its military observer group (ECOMOG), deployed in Sierra Leone" ¹⁵¹

147. *Id.* At the time, Nigeria was ruled by a military junta that had seized power from a democratically elected government, and thus was commonly perceived as being one of the least democratic countries in Africa. See Richard Joseph, *Democratization Under Military Rule and Repression in Nigeria*, in *DILEMMAS OF DEMOCRACY IN NIGERIA*, 137, 137-38 (Paul A. Beckett & Crawford Young eds., 1997).

148. French, *supra* note 138, at A10.

149. *Statement by the President of the Security Council*, U.N. SCOR, 52d Sess., 3809th mtg., U.N. Doc. S/PRST/1997/29 (1997).

150. S.C. Res. 1132, U.N. SCOR, 52d Sess., 3822d mtg. ¶ 8, U.N. Doc. S/RES/1132 (1997).

151. Specifically, the Security Council commended ECOMOG on "the important role they [were] playing in support of the objectives related to the restoration of peace and security" S.C. Res. 1162, U.N. SCOR, 53rd Sess., 3872nd mtg., U.N. Doc. S/Res/1162 (1998).

One of the primary objectives of the ECOWAS Peace Plan for Sierra Leone was the restoration of President Kabbah's constitutional government.¹⁵² Viewed from this standpoint, ECOMOG's actions were perfectly legal.¹⁵³ The lingering question is whether the intervention was also perceived as legitimate.

4. *The NATO Intervention in Kosovo*

*It has been argued that the spark that ignited the Balkan Wars was Serbian President Slobodan Milosevic's decision to remove Kosovo's autonomy in 1989. This decision played on Serbian fears of ethnic domination in Kosovo and invoked the memory of the Serbs' defeat at the hands of the Turks six centuries earlier.*¹⁵⁴

NATO's decision on March 24, 1999, to initiate a bombing campaign against the Federal Republic of Yugoslavia (FRY) was met with heavy criticism throughout the international community. Even within the organization's own ranks, it was not fully understood why the campaign was undertaken. Reportedly, NATO's original plan was to resist intervention. Indeed, NATO official strategists, when asked about the possibility of future strikes against the Serbs in Kosovo, responded that neither the United States nor NATO had any intention of helping the rebels in their campaign for independence.¹⁵⁵ One official from the Department of Defense (speaking on condition of anonymity) stated: "They [the Kosovo Liberation Army (KLA)] need to know . . . that the cavalry is not coming."¹⁵⁶ To understand why NATO policy in Kosovo changed, one must understand the events ongoing in the FRY prior to 1998. The conflict in Kosovo began as a non-violent campaign to win self-determination, yet ended with the deaths of approximately 10,000 ethnic Albanians and the displacement of

152. See Letter Dated 28 October 1997 from the Permanent Representative of Nigeria to the United Nations Addressed to the President of the Security Council, U.N. SCOR, 52d Sess., at 5, U.N. Doc. A/1997/824 (1997); Rowe, *supra* note 89, at 1.

153. Rowe, *supra* note 89, at 1 ("No member of the 16-nation ECOWAS ever questioned the legality of the intervention . . .").

154. CHESTERMAN, *supra* note 27, at 207.

155. Steven Lee Myers, *NATO Threat to Intervene in Kosovo Fades as Rebels Succeed*, N.Y. TIMES, July 16, 1998, at A12.

156. *Id.* (internal quotations omitted).

about 400,000 others between February 1998 and June 1999.¹⁵⁷

The Kosovo crisis originated hundreds of years ago, but this extremely condensed factual narrative will begin with the eruption of a new wave of nationalism within Kosovo in the 1970s and 1980s.¹⁵⁸ Kosovo was a place of ethnic pride for both Albanians and Serbs living within the province,¹⁵⁹ yet Albanians vastly outnumbered Serbs. Nationalism in part led to Slobodan Milosevic's meteoric rise to power through the rank and file of Serbian leaders.¹⁶⁰ Milosevic advocated an "extreme Serbian nationalist agenda."¹⁶¹ Thus, in 1989, Milosevic announced that Kosovo and Vojvodina, formerly autonomous provinces, would lose their right to self-government. These developments occurred simultaneously with the steady disintegration of the Federal Republic of Yugoslavia; after the loss of autonomy of Kosovo and Vojvodina, the six other republics (Serbia, Croatia, Slovenia, Montenegro, Macedonia, and Bosnia-Herzegovina) initiated demands for independence.¹⁶²

In Kosovo, Milosevic systematically removed the social, political, and cultural rights once freely enjoyed by the ethnic Albanian majority. In response, Kosovar Albanians coordinated a largely non-violent protest campaign from 1989 until 1997. Seeing little progress in this movement, however, the Kosovo Liberation Army commenced guerrilla activities in

157. See THE INDEP. INT'L COMM'N ON KOSOVO, THE KOSOVO REPORT: CONFLICT, INTERNATIONAL RESPONSE, LESSONS LEARNED 1-2 (2000) [hereinafter THE KOSOVO REPORT]. The numbers are by no means exact and differ markedly depending on the phase of the conflict: Phase one was from Feb. 1998 to March 1999, and phase two was from Mar. 24, 1999, to June 19, 1999, during the period of NATO bombing. See also Agon Demjaha, *The Kosovo Conflict: A Perspective from Inside*, in KOSOVO AND THE CHALLENGE OF HUMANITARIAN INTERVENTION: SELECTIVE INDIGNATION, COLLECTIVE ACTION, AND INTERNATIONAL CITIZENSHIP 34 (Albrecht Schnabel & Ramesh Thakur eds., 2000) [hereinafter KOSOVO AND THE CHALLENGE OF HUMANITARIAN INTERVENTION] (estimating 2,000 Albanians killed and 400,000 Albanians displaced between March and October 1998).

158. Entire books have been written on the intervention in Kosovo, and unfortunately space does not allow for a full accounting here. For an extremely detailed report complete with factual findings and recommendations, see THE KOSOVO REPORT, *supra* note 157.

159. *Id.* at 33.

160. *Id.* at 34.

161. *Id.*

162. See *id.*

1997 and 1998. The Serbian police began to carry out reprisals on both the rebel forces and Albanian villagers and civilians.¹⁶³

Milosevic and the Allied authorities then signed the Dayton Peace Accords in 1995, but did not address the Kosovar Albanians' demands for independence. Three years later in 1998, Milosevic commenced a systematic program of ethnic cleansing of Kosovar Albanians within the province; as a result, hundreds of thousands were both internally and externally displaced.¹⁶⁴ In March 1999, NATO air strikes began. According to NATO authorities, the intervention was thought necessary to avert a serious humanitarian catastrophe due to Milosevic's repression of ethnic Albanians.¹⁶⁵

Kosovo's strategic placement in the center of an already tense region provided yet another justification for intervention. The countries surrounding the FRY had interests that would be affected by the outcome of the war; Greece, Macedonia, and Montenegro all possessed significant populations of Albanians within their territories.¹⁶⁶ Milosevic's campaign to expel and persecute hundreds of thousands of ethnic Albanians showed no immediate signs of abating in either its severity or its scope. The potential for the conflict to spill over into neighboring regions seemed to increase steadily: American and other foreign monitors present in Kosovo could hardly ignore the specter of freshly filled mass graves outside rural vil-

163. WILLIAM G. O'NEILL, *KOSOVO: AN UNFINISHED PEACE* 21–24 (2002); Marie-Janine Calic, *Kosovo in the Twentieth Century: A Historic Account*, in *KOSOVO AND THE CHALLENGE OF HUMANITARIAN INTERVENTION* 19, 27–28, *supra* note 157; William G. O'Neill, Comments to First Draft, *An Uneasy Peace* (Feb. 2002) (unpublished) [hereinafter O'Neill, Comments].

164. Calic, *supra* note 163, at 28–29. William G. O'Neill of the International Peace Academy remarked: "Of note is the fact that the ICTY [International Criminal Tribunal for the former Yugoslavia] indictment of Milosevic only includes a genocide charge for his actions in Bosnia, not Kosovo." O'Neill, Comments, *supra* note 163.

165. Francis X. Clines, *Missiles Rock Kosovo Capital, Belgrade and Other Sites*, N.Y. TIMES, Mar. 25, 1999, at A1; R.W. Apple, Jr., *A Fresh Set of U.S. Goals*, N.Y. TIMES, Mar. 25, 1999, at A1.

166. George Khutsishvili & Albert Schnabel, *The Kosovo Conflict: The Balkans and the Southern Caucasus*, in *KOSOVO AND THE CHALLENGE OF HUMANITARIAN INTERVENTION*, *supra* note 157, at 64, 66–67; Georgios Kastakos, *The Southern Flank: Italy, Greece, Turkey*, in *KOSOVO AND THE CHALLENGE OF HUMANITARIAN INTERVENTION*, *supra* note 157, at 166, 171, 173.

lages or the steady forced marches of Albanians out of the province.¹⁶⁷

In adopting Resolution 49/204, the General Assembly deplored the reports of ethnic cleansing carried out by the Federal Republic of Yugoslavia against the Kosovar Albanians.¹⁶⁸ Specifically, the resolution examined and criticized human rights violations including: Police brutality against ethnic Albanians; arbitrary searches, seizures and arrests; forced evictions; torture of detainees; discrimination against, and arbitrary dismissals of, ethnic Albanian civil servants; the closing of all Albanian cultural and scientific institutions; the elimination in practice of the Albanian language; and many other discriminatory and repressive practices aimed at Albanians in Kosovo.¹⁶⁹ Eventually, the confluence of these factors helped to crystallize the international denunciation of Milosevic's regime.¹⁷⁰

5. *Lessons Learned*

The problem of legitimacy is one that regional, sub-regional, or collective defense organizations cannot safely ignore. The proliferation of intrastate conflict poses serious problems for regional stability that must be addressed. Yet what happens when one state, for example Nigeria in the Liberian case study, dominates an organization to the point that its actions are not perceived as multilateral?¹⁷¹ Should ECOMOG be praised for its efforts in ending the civil war, or condemned

167. Steven Lee Meyers, *NATO Opens a Broad Barrage Against the Serbs Over Kosovo*, N.Y. TIMES, Mar. 25, 1999, at A1; John M. Border, *President's Reasons: Moral Revulsion and Weight of U.S. Interests*, N.Y. TIMES, Mar. 25, 1999, at A15.

168. See G.A. Res. 49/204, U.N. GAOR, 49th Sess., U.N. Doc. A/RES/49/204 (1994) (condemning discrimination against and repression of ethnic Albanians in Yugoslavia).

169. *Id.* ¶ 4.

170. See S.C. Res. 1244, U.N. SCOR, 54th Sess., 4011th mtg., U.N. Doc. S/RES/1244 (1999); see also *Report of the Secretary-General Pursuant to Paragraph 10 of Security Council Resolution 1244 (1999)*, U.N. SCOR, U.N. Doc. S/1999/672 (1999); Craig R. Whitney, *France Urges Allies to Define Plan for Autonomy for Kosovo*, N.Y. TIMES, June 25, 1998, at A6 (explaining why, while both Russia and China initially opposed NATO's military intervention in Kosovo and threatened to use their veto to oppose any intervention, neither state chose to do this).

171. See David Wippman, *Enforcing the Peace: ECOWAS and the Liberian Civil War*, in ENFORCING RESTRAINT, *supra* note 11, at 157, 191-92.

for prolonging it? The same concerns are apparent with the NATO intervention in Kosovo. ECOWAS was originally created to address the problem of West African economic integration.¹⁷² The organization's charter does not contain a mandate for enforcement actions. Yet ECOWAS has taken an increasingly active role in local attempts to enforce peace within West Africa.

These responses may constitute *de facto* recognition by states that sub-regional and regional organizations may provide a viable solution to the rising tide of intrastate conflict. Many states in West Africa supported the organization's intervention in Liberia because the conflict had spilled outside of Liberia's boundaries and become a serious threat to regional and international stability. In Africa, the problem presented by transboundary spillage from neighboring conflicts is particularly worrisome. The war in Sierra Leone further demonstrates why the international community cannot discount the impact of interlocking regional tensions.¹⁷³

Another potential lesson from the study of the conflict in Sierra Leone is that the successful resolution of complex humanitarian crises requires more than just a military response. ECOMOG's essential task was to stop the fighting between the different sides, to stop the attacks on civilians, and to return a measure of stability to the country. Ultimately however, multilateral, regional, and sub-regional groups need to think strategically about viable methods of sustaining peace. A few African states and organizations are currently struggling to create and implement their own "mechanisms for peace and security" within their respective regions.¹⁷⁴

172. *Id.* at 165.

173. See JOHN L. HIRSCH, *SIERRA LEONE: DIAMONDS AND THE STRUGGLE FOR DEMOCRACY* 25 (2001) (noting that diamonds from Sierra Leone have financed rebel movements in other African countries).

174. William Thom, *Africa's Security Issues through 2010*, MIL. REV., July-Aug. 2000, at 5-7. For example, the East African Cooperation, made up of Kenya, Tanzania, and Uganda, has conducted joint military exercises. *Id.* at 6. See also Rowe *supra* note 89, at 3 ("[F]ollowing the signing of a memorandum of understanding, troops from Kenya, Tanzania and Uganda have organized joint military exercises Member states of the Southern African Development Community (SADC) have also been actively considering legally binding agreements for military cooperation.").

Having regional and sub-regional organizations address these issues has several advantages. Their proximity to the sources of tension will certainly help them to respond more quickly to civil conflicts. These organizations will also often possess both significant expertise and more incentives to seek peaceable resolution of local conflicts, and thus may be able to summon the requisite political will for action more quickly and efficiently than may be possible at the U.N. Even at its best, the decision-making process at the U.N. is slow and laborious, and the requisite political will for interventions in distant and seemingly intractable conflicts is often lacking. One significant disadvantage to this approach, however, is that many regional and sub-regional organizations simply do not have the capacity to manage intrastate conflict successfully. African states recently emerged from colonial domination traditionally have been very protective of their sovereignty. When threatened with the massive effects of civil conflict, however, these states may be inclined to support a higher degree of outside interference.

It is difficult to draw unambiguous conclusions from the Kosovo case study. According to the Kosovo Report, “[t]he overall narratives of the international response are inherently inconclusive, and hence without clear ‘lessons’ beyond the prudential observations in favor of early engagement and greater attentiveness to nonviolent options.”¹⁷⁵ However, in one sense, Kosovo exemplifies the unprecedented challenges that now face the international community—illustrated by the flawed assumptions that resulted in a lack of preparation for a hitherto unanticipated humanitarian demand.

One possible lesson of the Kosovo conflict is that the effect of public opinion and the role of mass media is not one to be taken lightly. The images of nearly one million Kosovar Albanians being expelled from Kosovo into Macedonia and Albania, combined with reports of attacks on helpless civilians and the discovery of mass graves, did much to keep the NATO coalition unified. The intervention in Kosovo suggests that in situations where humanitarian catastrophe looms, the international community may not allow gridlock in the U.N. to thwart its determination to intervene.

175. THE KOSOVO REPORT, *supra* note 157, at 3.

There does seem to be consensus for the idea that mass murder and ethnic cleansing are not within the prerogatives of sovereign states; on the contrary, states may have the duty to refrain from such egregious violations against members of their own citizenry. Perhaps the international community will be less likely to ignore fundamental human rights violations that rise to the level of genocide in the future. Nevertheless, the intervention still raises serious concerns about the legitimacy of unwanted military presence in a sovereign state.¹⁷⁶

In the end, the aerial bombardment of Belgrade proved successful. This result, however, was not clear at the outset of the conflict; initially it was found that the limited NATO air strikes were not having the desired effect—they seemed only to strengthen Milosevic's resolve. The irony is that NATO went to war to prevent the ethnic cleansing of Kosovo's Albanians, but then refused to send ground troops to protect them. A common fallacy is that the air strikes alone succeeded in bringing Milosevic to his knees. The threat to send in ground troops, which was finally made in May 1999, probably also led to Milosevic's eventual surrender. The defection of Russian support for the Milosevic regime was another decisive factor in the outcome of the conflict. The strikes, combined with the international pressure exerted on Milosevic, isolated the Belgrade government and hastened the end of the war.

In a broader sense, the Kosovo conflict also speaks to the failure of conflict-prevention measures. Ignoring the question of Kosovar autonomy at Dayton was surely a fatal flaw in the Bosnian peace negotiations. It likely provoked ethnic Albanian discontent and probably contributed to the decision to disown non-violent resistance as a solution. In addition, the conflict between the Serbs and the Albanians had been predicted prior to 1989, yet the international community lacked the requisite political will to address the issue. In allowing Milosevic to sidestep these issues, the international community displayed its weak convictions. Milosevic thus felt secure in ignoring countless threats of military intervention and capitalized on this weakness to continue his system of repression virtually unchecked.

176. See THE RESPONSIBILITY TO PROTECT, *supra* note 3, at 1.

V. CONCLUSION

*For some, the new interventions herald a new world in which human rights trumps state sovereignty; for others, it ushers in a world in which big powers ride roughshod over the smaller ones, manipulating the rhetoric of humanitarianism and human rights. The controversy has laid bare basic divisions within the international community. In the interest of all those victims who suffer and die when leadership and institutions fail, it is crucial that these divisions be resolved.*¹⁷⁷

According to more than a few scholars, a new norm is progressively developing that requires states to adhere to minimum citizen protection standards as a condition of holding the right to govern; following from this premise is the idea that national and state leaders should be held accountable for failing to meet these standards.¹⁷⁸ The perception of legitimacy is central to the progressive development of international law. Multilateral interventions are preferable to unilateral actions because the presence of many states acting together as a coherent whole adds a measure of legitimacy to the specter of unwanted foreign military intervention in the affairs of sovereign states.

The conflicts described in the foregoing case studies illustrate the changing face of intrastate conflict. Despite the expansion of the U.N.'s enforcement and peacekeeping duties, there has not been a parallel expansion in the resources available to the organization. Consequently, regional and other multilateral actors have tried to fill the void, but these organizations often face capacity and effectiveness problems of their own. The problem posed by Kofi Annan regarding the international consequences of failure to intervene quickly and efficiently in humanitarian crises,¹⁷⁹ is one that cannot be ignored:

To those for whom the greatest threat to the future of international order is the use of force in the absence of a Security Council mandate, one might ask,

177. *Id.* at 2.

178. See, e.g., Landgoed Lauswolt, *Using "Any Means Necessary" for Humanitarian Crisis Response* (The Stanley Foundation's Thirty-Sixth United Nations of the Decade Conference), June 17–22, 2001, at 2–3.

179. *Report of the Secretary-General on the Work of the Organization*, U.N. GAOR, 54th Sess., 4th mtg. at 2, U.N. Doc. A/54/PV.4 (1999).

not in the context of Kosovo but in the context of Rwanda, if, in those dark days and hours leading up to the genocide, a coalition of States had been prepared to act in defence of the Tutsi population, but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold?

In sum, the case studies examined herein suggest six conclusions.

First, the problem of legitimacy is still present whether a military intervention involves multilateral or unilateral intervention. Second, multilateral action, marked by the participation of two or more states or regional organizations, at least diminishes the problem of foreign military intervention in the affairs of non-consenting, sovereign states.

Third, regional organizations, particularly in Africa, have great potential for intrastate conflict resolution but should rethink their mandates, as the OAU has in its Mechanism for Conflict Prevention, Management and Resolution. If regional organizations are to be successful, they will need to receive broad-based support from the international community. Fourth, interventions that avoid imposing a particular ideology and do not attempt to change the status quo of the target state are less likely to receive criticism than are unilateral actions. Fifth, the justification of intervention based on the defense of one's nationals is still viable.

Sixth, and finally, the traditional concept of sovereignty is outdated. Sovereignty should include the idea that states have responsibilities as well as rights. Foremost among these responsibilities is the duty to adhere to minimum standards for the protection of citizens. If the principle of sovereignty is modified, states might be less willing to stand by in the face of grave humanitarian crises.

The values underlying the Charter were originally conceived of as operating in relation to unilateral conduct. The prospect of multilateral intervention, unlike unilateral action, presents positive opportunities for responding to the proliferation of intrastate conflict.¹⁸⁰ At the same time, there are still

180. See Interview with Edward Luck, *supra* note 39. Some scholars dispute the idea that intrastate conflict is in fact on the rise: "Indeed it appears that, instead of our entering a period of more frequent and more destructive con-

significant disadvantages to military intervention: The specter of ideological motivations and self-interest is ever present, as the intervention in the Dominican Republic more than amply demonstrates. Yet the risks associated with intervention by outside states in civil wars significantly decrease as the number of participants increase; as the study of NATO's actions in Kosovo suggests, the necessity of coordinating the actions of 19 or more countries may diminish tendencies toward rash decision-making. At the same time, the globalization of mass media and communications will continue to make human suffering more real to individuals presently safe from civil war.

Underlying the Secretary-General's statement is an assumption that the international community must be prepared to move beyond the strict confines of the law as enumerated in the U.N. Charter. As one commentator put it: "The principles of sovereignty of states and noninterference in their internal affairs . . . cannot constitute a screen behind which torture and murder may be carried out."¹⁸¹ In *An Agenda for Peace*, Secretary-General Boutros Boutros-Ghali expressed optimism for the future role of regional organizations, and argued that regional organizations should be used for preventive diplomacy, peacekeeping, peacemaking, and post-conflict peace building.¹⁸² The situations in Liberia and Sierra Leone especially demonstrate the usefulness of coalitions forged between regional organizations and member states of the U.N., as conceived in Chapter VIII of the U.N. Charter. The complexities of these conflicts—where fighting is often occurring between more than two parties—demonstrate the need for more creative solutions to intrastate conflict.

On September 18, 1998, the Security Council adopted Resolution 1197, which focused on the need for U.N. support for regional operations.¹⁸³ The resolution also called for more

flict, we may, in fact, be leaving such a period. A number of recent studies have concluded that both the number of conflicts and their levels of devastation have declined markedly since a high point in 1992." *Id.* (citing Ted Robert Gurr, *Ethnic Warfare on the Wane*, FOREIGN AFF., May-June 2000, at 52-53).

181. James Chace, *The Future is a Foreign Country*, THE NEW YORK TIMES BOOK REVIEW, July 29, 2001, at 12 (quoting Pope John Paul II).

182. *An Agenda for Peace*, *supra* note 4, ¶ 64.

183. S.C. Res. 1197, U.N. SCOR, 53d Sess., 3928th mtg., U.N. Doc. S/RES/1197 (1998); U.N. LESSONS LEARNED UNIT, COOPERATION BETWEEN THE

consultation and coordination between the U.N. and OAU, and between the U.N. and sub-regional organizations in Africa. Yet for regional organizations to be successful, they must receive broad-based support from the international community. The lesson learned from the study of regional intervention under U.N. auspices in Liberia and Sierra Leone is that there is much potential for the future effectiveness of such cooperation.

U.N. support also provides an added measure of legitimacy to regional enforcement operations. If the U.N. is kept abreast of these operations, both before commencement and for the duration of activity, there is no real reason to fear such interventions. Furthermore, the existence of effective regional organizations provides an "out" for the U.N. in times of political stalemate. Another benefit of an approach of coordination and consultation is added flexibility: "In certain situations, some parties to a conflict may prefer UN involvement, while others may prefer that of a regional organization. Thus, cooperation between the UN and regional organizations/arrangements provides opportunities for compromise that can break a stalemate and provides incentives for conflicting parties to negotiate."¹⁸⁴ Finally, regional organizations may be more specially qualified to understand and address the root causes of local conflicts, may have more information regarding the parties involved, and may be better equipped to quickly deploy troops.¹⁸⁵

On the other hand, it is possible to follow this line of reasoning too far. As one scholar notes: "Keeping control of war in the modern age means keeping control of this powerful new rhetoric, making sure that the cause of human rights does not lure citizens into wars that end up abusing the very rights they were supposed to defend."¹⁸⁶ This type of charge might, for example, be legitimately leveled at the states intervening in Kosovo. The International Commission on Intervention and State Sovereignty, while being sensitive to these concerns, pro-

UNITED NATIONS AND REGIONAL ORGANIZATIONS/ARRANGEMENTS IN A PEACEKEEPING ENVIRONMENT: SUGGESTED PRINCIPLES AND MECHANISMS, [hereinafter U.N. LESSONS LEARNED UNIT] ¶ 23 (1999), available at <http://www.un.org/Depts/dpko/lessons>.

184. U.N. LESSONS LEARNED UNIT, *supra* note 183, at ¶ 29.

185. *Id.* ¶ 30.

186. MICHAEL IGNATIEFF, *VIRTUAL WAR: KOSOVO AND BEYOND* 6 (2000).

poses that: “[f]inding a consensus about intervention is not simply a matter of deciding who should authorize it and when it is legitimate to undertake. It is also a matter of figuring out how to do it so that decent objectives are not tarnished by inappropriate means.”¹⁸⁷

One question posed in the introduction was whether the principle of non-intervention, as embodied in Article 2(4) of the U.N. Charter, has become a dead letter, and whether the rule still, or ever, possessed the power to bind states. The only possible conclusion is that the answer is still pending. Until the rules regarding aggression become more determinate,¹⁸⁸ state practice regarding military interventions will continue to vary. In the interim, the challenge is to formulate consistent, measured, and sufficiently responsive strategies for multilateral intervention that stop short of the use of armed force. While this process is ongoing, one can only hope that the decision of states and regional organizations to intervene in civil wars beyond their own borders will not disturb the current state of uneasy peace.

187. THE RESPONSIBILITY TO PROTECT, *supra* note 3, at 5.

188. See THOMAS FRANCK, THE POWER OF LEGITIMACY AMONG NATIONS 59 (1990) (discussing the costs of indeterminacy of international rules).