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HUMANITARIAN INTERVENTION: THE EVOLUTION OF THE IDEA AND PRACTICE

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INTRODUCTION

In the post-Cold War era, the discussion on human rights and its promotion at the international level has proliferated, and this has coincided with a growing tendency to see a linkage between violations of human rights and international security. Drastic changes in international relations since the end of the Cold War have increased the probability of intervention with or without UN Security Council authorisation. Thus, the debate about humanitarian intervention has been reheated, generating a considerable literature, besides the increasing state practice. This article is an attempt to comprehend and illuminate this controversial issue.

In doing so, after touching upon the definition of the concept, this article will discuss the evolution of the idea and practice of humanitarian intervention. By this means, the way in which the concept of humanitarian intervention has changed in accordance with the changing international milieu will be underlined. This article thus puts forward the view that humanitarian intervention is a reflection of a wider debate in international relations, namely cosmopolitanism vs. realism and, as such, it represents a shift from a statist paradigm to growing cosmopolitanism.

DEFINITION OF THE CONCEPT

Since the issue of humanitarian intervention is related to international law, political science, morality and international relations, one may come across different definitions and categorisations.

Adam Roberts defines humanitarian intervention as a "military intervention in a state, without the approval of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants".¹ For Tonny Brems Knudsen, humanitarian intervention is "dictatorial or coercive interference in the sphere of jurisdiction of a sovereign state motivated or legitimated by humanitarian concerns".² According to Martha Finnemore, humanitarian intervention is a "military intervention with the goal of protecting the lives and welfare of foreign civilians".³ In the words of Bhikhu Parekh, humanitarian intervention is "an act of intervention in the internal affairs of another country with a view to ending the physical suffering caused by the disintegrations or gross misuse of authority of the state, and helping create conditions in which a viable structure of civil authority can emerge".⁴ In a proper legal sense, according to Wil D. Verwey, it is understood "as referring only to

coercive action taken by states, at their initiative, and involving the use of armed force, for the purpose of preventing or putting a halt to serious and wide-scale violations of fundamental human rights, in particular the right to life, inside the territory of another state".⁵

Some common points between these definitions include:

a) Use of military force: although some scholars tend to include non-forcible actions in the definition of humanitarian intervention, the majority tends to exclude them. The main argument for including the military dimension is the fact that, since warring parties mainly cause the violations, their handling needs a military involvement.

b) The absence of the target state's permission: this is the main point, which makes it a humanitarian intervention and distinguishes it from peacekeeping. It is also meaningful in the sense that such an intervention is generally carried out in cases of gross violations caused by the state itself or the state's collapse, in which case there is no potent authority, as in the case of Somalia.

c) Its aim is to help non-nationals. Despite some legal scholars' tendency to include interventions to protect a state's own nationals abroad (especially in the form of rescue operations), recent literature tends to put those cases under self-defence and reserve the term 'humanitarian intervention' to those cases that aim to help non-nationals.

d) Agency of intervention. Though some confine the term to interventions by states on their own (self-help), there is a recent tendency to include interventions under a UN umbrella.

For the purposes of this article, humanitarian intervention may be defined as:
Forcible action by states to prevent or to end gross violations of human rights on behalf of people other than their own nationals, through the use of armed force without the consent of the target government and with or without UN authorisation.

EVOLUTION OF THE CONCEPT UNTIL THE END OF THE COLD WAR

The early discussions of the concept of humanitarian intervention can be traced back to sixteenth and seventeenth century classical writers on international law, particularly in their discussions on just wars. Vitoria, Gentili, Suarez, Vattel and Grotius are well-known names in this tradition. Grotius, in his *De Jure Belli ac Pacis* of 1625, stated that states are entitled to exercise the right "vested in human society" on behalf of oppressed individuals. The Grotian formulation allows the full-scale use of force to end human suffering. There has been a strong Grotian tradition in international relations and this idea is represented today by writers such as Vincent, Lillich and Lauterpacht.⁶ Throughout the eighteenth and nineteenth centuries, philosophers of political liberalism, such as Mill, related the concept of humanitarian intervention to the concept of human rights.⁷

Apart from these intellectual precursors, the modern concept of humanitarian intervention is generally associated with state practice in the nineteenth century, when states started to invoke humanitarian reasons to justify their interventions. The well-cited cases were generally directed against the Ottoman Empire for the protection of Christians, such as the Greek War for Independence, Lebanon-Syria, the Bulgarian Agitation and Armenia. The Nordic approach here interprets it in a larger context and includes the interventions carried out within the framework of the Concert of Europe.⁸

The strategic motives behind all these interventions and the origin of those whose rights were being defended threw into question the humanitarian character of the intervention. The lack of a prohibition on the use of force in international relations was an important reason to explain the existence of this practice. Therefore, it can be said that international lawyers discussed it within the framework of just wars. Partly due to the efforts to outlaw the use of force after World War I, there was a decline in the practice during the first half of the twentieth century. As to the question of whether this historical practice was offering enough precedents to establish itself as a doctrine of humanitarian intervention in customary international law, the majority of scholars tended to refuse it, especially in the absence of consistent state practice and *opinio iuris*. Yet, Nordic interpretation generally accepts that a traditional doctrine of humanitarian intervention was established during this period.⁹

The UN Charter introduced a new solution to the use of force in international relations by endeavouring to qualify the use of force in international society and imposing limits upon it. First, it extended the doctrine of non-intervention to all states and made it a universal norm for the first time in history. Second, it allowed the use of force only in case of self-defence or collective security measures under Chapter VII of the Charter. By doing so, it left the threat to international peace and security as the only possible justification for intervention in the domestic affairs of a state. Moreover, all acts of intervention were subject to authorisation by the UN, acting as the representative of the international community.¹⁰

Along with the emergence of non-intervention as a universal norm, a UN-initiated parallel development was in conflict with this principle: the development of human rights as a global issue. Article 1 of the Charter emphasises promoting respect for human rights and justice as one of the fundamental missions of the organisation. Article 55 states that the UN shall promote and respect the human rights and basic freedoms, and subsequent UN initiatives have strengthened these claims. Humanitarian intervention, as the most assertive form of promoting human rights at a global level was clearly incompatible with norms such as non-intervention and state sovereignty.¹¹

As a result, with some restrictions, the UN Security Council has, since 1945, had the right to authorise the use of force to end human rights violations as well as to authorise non-forcible measures. Yet, practice throughout the Cold War period shows that, contrary to this expectation, the Security Council was hardly able to implement the UN Charter's provisions on collective security due to ideological competition and global confrontation between the two superpowers, the emergence of China as a global player, the emergence of Third World countries (especially their valuation of sovereignty), North-South division and so on.

Due to the impossibility of collective action endorsed by the UN, the issue of intervention became understood as forcible self-help by states to defend human rights in other countries. Hence, there were some unilateral interventions, which are given as recent examples of humanitarian intervention. The well-known examples that could be said to emerge from humanitarian concerns are the Indian intervention in East Pakistan (later Bangladesh), the Tanzanian intervention in Uganda and the Vietnamese intervention in Kampuchea.¹² Despite the existence of other motives, they may be labelled humanitarian intervention to the extent that they were responses to humanitarian crises. But the striking point common to all these cases is that, in spite of the existing humanitarian catastrophe in all these cases and the possibility of justifying these interventions on humanitarian grounds, those intervening did not behave in this way. They rather relied on self-defence as their legal justification.¹³ Furthermore, intervening states' actions were generally condemned and in some

cases dictatorial and coercive character of the operations was denied".¹⁴ In other interventions, political motives were much more obvious and many of them were either concerned with protecting a state's own nationals abroad or were at the host government's invitation.¹⁵ What is more, UN's response was almost routinely to condemn interventions.

This brief examination of the period shows that state practice throughout the Cold War did not establish itself as a doctrine of humanitarian intervention in customary international law or as a norm in international politics and it remained an exception to the rule. One may say that, contrary to the pre-Charter period, states' humanitarian interventions out of the UN (as stated before, some confine the term humanitarian intervention just to this strict definition) was interpreted as incompatible with the UN framework, hence illegitimate.¹⁶ Even the Nordic approach here accepts that the Cold War practice cannot be interpreted as providing a basis for a doctrine of humanitarian intervention.¹⁷

CHANGING CONTEXT OF HUMANITARIAN INTERVENTION IN THE POST-COLD WAR ERA

The end of the Cold War has brought about a substantial change in the concept of humanitarian intervention as well as in the practice. This change is rooted in different developments. One of the main factors is the changing nature of the international system; the end of superpower rivalry has to some extent removed the systemic constraints on intervention in domestic affairs. The end of the ideological confrontation has also largely undercut the rationale for supporting 'friendly' repressive regimes to prevent them from falling into the other camp. This is especially true as far as the US is concerned.¹⁸ As the Cold War had made non-intervention a universal norm, with the end of the Cold War, norms pertaining to the protection of individual rights have increasingly received general acceptance, particularly among the Western states. This resulted in a suitable political atmosphere for initiating interventions.

Humanitarian interventions are not only responses to the suffering caused by repressive governments, but also they are directed to situations produced by internal conflicts, state disintegration and state collapses, as a result of which human rights are grossly violated. The overwhelming majority of armed conflicts in the post-Cold War era are internal or civil war.¹⁹ This has resulted in an increase in the number of situations crying out for humanitarian involvement, and the effects can be seen in the growing number of UN Security Council Resolutions under Chapter VII. In some cases, the Security Council defined gross violations of human rights and civil conflicts as a 'threat to international peace and security' and decided to impose economic sanctions or authorised the use of force. Since 1989, it has imposed economic sanctions on 14 occasions (compared with twice between 1945 and 1988), and used force 11 times other than for self-defence (as opposed to three times between 1945-1988).²⁰

The humanitarian component, namely the definition of humanitarian crisis, is no longer confined to protecting fundamental human rights, but is extended to include the question of upholding international humanitarian laws of war (war crimes) and providing humanitarian assistance (gross deprivation and starvation).²¹

Strict definitions in the Cold War period created the idea that intervention was illegal per se because it breached the principles of sovereignty and self-determination. But the shift of focus from Article 2(4) to 2(7) of the UN Charter has opened the whole matter to reinterpretation and we have a situation where, as Greenwood states: "... it is no longer tenable to assert whenever a government

massacres its own people or a state collapses into anarchy that international law forbids military intervention altogether."²²

Instead of self-help by states, most of post-Cold War interventions were in some way related to regional or global interventions and legitimised or licensed by UN Security Council resolutions. This increasing UN involvement was so visible that, even in non-UN interventions, those intervening have attempted to link the issue to the UN.

Apart from increasing UN involvement, multilateralism was another change in the agency the end of the Cold War brought about.²³ Many observers have always been suspicious of unilateralism due to the high risk of abuse. As stated before, Cold War conditions made a multilateral intervention difficult to realise, but, in the post-Cold War period, multilateralism became one of the necessary conditions for humanitarian intervention or, in the words of Finnemore, "humanitarian military intervention now must be multilateral to be legitimate".²⁴ Donnelly is quite assertive in this matter; apart from thinking that multilateralism is largely immune to most of the arguments raised against unilateralism, he further claims, "if humanitarian intervention has a real future, it is through multilateral action".²⁵ Nevertheless, it must also be noted that the remaining division from the Cold War era, namely the North-South division, continues to pose obstacles. Knowing that it would be their sovereignty that is overridden, developing countries have been maintaining traditional notions of non-intervention and state sovereignty and, in many cases, opposing multilateral actions justified by an implied doctrine of humanitarian intervention or at least to their becoming a norm.

Based upon this background, some cases of humanitarian interventions have been developed in the post-Cold War period. In this regard, UN Security Council Resolution 688, about the situation in Northern Iraq, was the watershed, followed by the cases of Rwanda, Somalia, the former Yugoslavia (Bosnia), Haiti, Liberia, Kosovo and Sierra Leone.²⁶

The UN Justification: 'Threat to Peace and International Security'

As to the question of when to intervene in a domestic crisis, there has not emerged a consensus among the states or within international organisations, including the UN. The UN practice was developed on a case by case approach and it refrained from any codification about the criteria for possible cases of humanitarian intervention in the future. Yet, out of the cautious approach of the UN and the arguments of the observers, a strong tendency can be discerned. When we look at the UN involvement in these cases, the most salient point is the tendency to link human rights and widespread human rights violations within a country to Chapter VII of the UN Charter, starting from Resolution 688.²⁷ In this way, the traditional understanding that humanitarian intervention is unlawful because it involves neither self-defence (Art. 51) nor enforcement action under Chapter VII, was overcome. Furthermore the ban on UN intervention in domestic affairs without the consent of the target state regulated in Article 2(7) is eliminated since it makes an exception in that "this principle shall not prejudice the application of the enforcement measures under Chapter VII".

But, here the most interesting point is the fact that there is no reference to Articles 55 and 56 of the UN Charter, which require member states to take joint and collective action for the achievement of universal respect for, and observance of human rights and fundamental freedoms for all. Instead of referring to these articles in recent UN authorisations, a linkage between threat or breach of international peace and the situation at hand was made. By doing so, such an intervention was not justified on a purely humanitarian basis, instead it was considered as long as it was related to

international peace and security.

Another controversial point is that in Security Council Resolutions 688 about Northern Iraq and 1199 about Kosovo there was no clear legal Security Council authorisation for the member states' armed forces to intervene. In the case of Northern Iraq, following the UN resolution, the US, Britain and France launched Operation Provide Comfort, by creating safe havens and imposing no-fly zones. In Kosovo, NATO countries conducted a full-scale operation against Yugoslavia. Politically, these states' military actions seemed to be based on an implied right of humanitarian intervention given the fact that the UN Security Council had previously defined the situation as a threat to international peace and security.

This broad interpretation of 'threat to peace and international security' in the post-Cold War era has resulted in considering internal conflicts and humanitarian catastrophes with cross-border repercussions as constituting threats to international peace and security. Therefore, the crises whose external implications are severe enough to make an exception to the non-intervention principle have warranted and may, in the future, warrant humanitarian intervention. Yet, some states object to this broad interpretation of humanitarian intervention authorised by the UN Security Council on the basis that the Security Council may act arbitrarily in some future cases. Furthermore, the argument that the Security Council, under the Charter and its practices, is not entitled to authorise humanitarian intervention based purely on massive violations of human rights with no cross-border repercussions raises questions about the legal and structural limits of the Security Council on matters of humanitarian intervention.

Humanitarian Intervention without Security Council Authorisation

Although the UN authorised most of the post-Cold War interventions, the practice of intervention without the UN umbrella has not disappeared completely. The effects of this reality can be observed in theoretical discussions as well. At the beginning of the 1990s, the debate about humanitarian intervention was mainly focused on the question of whether violations of human rights constitute a threat to international peace and security, hence legitimise humanitarian intervention. But, later on the linkage between human rights and security was largely recognised and humanitarian intervention through UN authorisation did not create so much controversy. By the end of the 1990s, especially with the NATO intervention in Kosovo, the debate has gained a new dimension raising the question whether such interventions need UN authorisation.²⁸

There is no consensus in the legal doctrine, but most American legal scholars have defended the legality of the alternative of self-help for a long time, even as early as the 1960s and 1970s.²⁹ For example Verwey, one of the pioneers of this genre, maintains the necessity of keeping this alternative alive and underlines that it must be regulated in a strict manner. This way of thinking goes further, confining the term humanitarian intervention to self-help by states and not including interventions under the UN in this category.³⁰ Even some proponents of a right to humanitarian intervention without UN authorisation argue that measures decided upon by the Security Council under Chapter VII cannot fall within the doctrine of humanitarian intervention, rather they might be called 'enforcement measures for humanitarian purposes'. For them, this is necessary to prevent further misunderstanding and ambiguities about the concept.³¹ But most of lawyers are against the recognition of such a right, which would allow self-help by states, mainly in that it would violate the Charter's prohibition on the use of force.³²

Politically, self-help is generally opposed on the basis that it would lead to abuse or disorder in the international system. According to the opponents of self-help by states, it might be difficult to distinguish between humanitarian intervention and *realpolitik*, hence, as a way to reduce the danger of abuse, it is necessary to restrict humanitarian intervention to those cases carried out under the UN umbrella and refuse any kind of self-help.³³ Proponents of a right to self-help, on the other hand, underline the need to consider two points. First, growing global awareness about human rights makes gross violations of human rights intolerable. Second, UN actions may not respond in an effective and timely way to a crisis. Hence, in their view, the option of self-help must be recognised as a back-up policy to interventions under the UN framework. Furthermore, keeping this alternative as a viable policy option is ethically justified as well.³⁴ Yet, it must be noted that those who argue for such a right to self-help, both politically and legally, should not be seen as those who are not concerned with the problem of abuse or disorder; on the contrary the proponents of the right to self-help are also aware of the possible dangers of accepting such a right. It is for this reason that the attempts to formulate the necessary criteria to regulate humanitarian intervention come mainly from these scholars.

There were interventions without UN authorisation in the post-Cold War period, such as the Economic Organisation of West African States' intervention in Liberia, the US-, UK- and French-led interventions in Iraq since 1991 and NATO's intervention in Kosovo.³⁵ The Iraq and Kosovo cases are quite complicated in the sense that there were prior Security Council resolutions defining the situation as a threat to peace, but none giving explicit authorisation for the use of military force, as stated before. Thus, the debate about these cases has not been settled among scholars.

Despite the increase in post-Cold War practice, it cannot constitute precedents for a doctrine of humanitarian intervention, nor can it establish a norm in customary international law. Nevertheless, although there is no clear legal doctrine of humanitarian intervention, the Nordic approach accepts that, especially when it is carried out through the UN, humanitarian intervention has become a *de facto* norm at least in the declarations and practices of the Western democracies.³⁶

CONCLUDING REMARKS:

HUMANITARIAN INTERVENTION AND THE INTERNATIONAL SYSTEM

The current situation of humanitarian intervention represents a search for equilibrium in terms of the question about the juxtaposition of realism and cosmopolitanism in conceptualising and practising international relations. In this regard, recognising the linkage between violations of human rights and international peace and security, thus opening room for humanitarian intervention in international relations, is a *via media* solution that seeks a balance between realist and globalist visions of world politics with a remarkable tilt toward the realist side of the spectrum.

The post-Cold War period has opened new avenues in this direction. Increasing emphasis on and discussions of the issue, together with some practices reflect the growing consciousness of cosmopolitan ideals. Recognising such a cosmopolitan ideal and demanding its application in international politics confronts us with the real world, where power politics and statism reign. The current international system is based upon some principles that are prioritising order and stability over justice. Yet, acceptance of humanitarian intervention would undermine the current international system, prioritising justice over order and thus dominance of the statist paradigm. Consequently, together with other practical problems related to the concept, humanitarian intervention is a challenging issue. As a result, despite the growing awareness of cosmopolitan ideals, it still lacks

general acceptance and has not been codified into a doctrine of international law or international customary law. Nor has it achieved the status of a norm in international politics to guide the practice of the states.

Even the Security Council, in the cases where it has authorised an intervention, has had to underline the 'unique and exceptional character' of the crisis in question in a way to reflect the dominance of the statist paradigm. This can be observed in international politics as well. The reason for the avoidance of the states to make it a norm is two-fold. While the small states in the system are avoiding giving their consent to a possible intervention in advance because it might one day turn against them, the great powers are refusing to accept such a general norm because it would oblige them to intervene at every possible case. Another impediment that must be added is the fact that, under UN authorisation or not, legitimate or not, any possible intervention would need the involvement of individual states or regional or other organisations since the UN has not been able to develop its own military organisation as envisaged in the Charter. Hence, the decisions are easy to take but the implementation is still bound to the willingness of states and we see that UN authorisation can be realised only in case a state or a group of states have declared their readiness.³⁷ In both cases, one can see how strong the non-intervention norm still is. States do not want to develop a norm of humanitarian intervention, nor do they agree on a distinct UN military umbrella to operate immune from the individual states.

Yet, the fact that there were some cases of humanitarian intervention despite the strongly held principle of non-intervention implies the violation of this basic pillar of the international system and this needs further elaboration. The main reason why the non-intervention norm has achieved a primary place is the concern of states about a world of 'warring tribes', in which unrestricted, unilaterally acting states are likely to pursue their own interests, trying to dominate others and thus creating an anarchic-chaotic world of international affairs. The norm of non-intervention, therefore, has a strong moral standing in that, by endeavouring to restrain the use of armed force and reduce war among states, it implies somehow an orderly world, where different societies may coexist in a relatively peaceful atmosphere of harmony and concord. The growing idea in the post-Cold War era that an emerging 'global community' may take the initiative in undertaking particular forms of intervention, namely humanitarian intervention, through the acts of regional and global organs has altered the picture drastically. The tendency of some international organisations to authorise humanitarian intervention under clearly defined purposes and the multilateral conduct of the intervention have eased the main concern of the non-intervention norm concerning the prospect of order in international affairs, and thus weakened the main source of the traditional objection to humanitarian intervention. Therefore, we may conclude that the more the globalist characteristics of international relations grow to reduce the distance between domestic and international realms, the more room there will be for humanitarian intervention in international relations.

1 Adam Roberts, 'Humanitarian War: Military Intervention and Human Rights', *International Affairs*, Vol. 69, No. 3, July 1993, p. 426.

2 Tonny Brems Knudsen, 'Humanitarian Intervention Revisited: Post-Cold War Responses to Classical Problems', in Michael Pugh, *The UN, Peace and Force*, London, Frank Cass, 1997, p. 146.

3 Martha Finnemore, 'Constructing Norms of Humanitarian Intervention', in Peter Z. Katzenstein (ed.), *The Culture of National Security: Norms and Identities in World Politics*, New York, Columbia University Press, 1996, p. 154.

4 Bhikhu Parekh, 'Rethinking Humanitarian Intervention', in Jan Nederveen Pieterse (ed.), *World Orders in the Making*, London, Macmillan Press Ltd, 1998, p. 147.

5 Wil D. Verwey, 'Humanitarian Intervention in the 1990s and Beyond: An International Law Perspective', in Jan Nederveen Pieterse (ed.), *World Orders in the Making*, London, Macmillan Press Ltd, 1998, p. 180.

6 Knudsen, *op. cit.*, p. 148.

7 Parekh, *op. cit.*, p. 142; Danish Institute of International Affairs, *Humanitarian Intervention: Legal and Political Aspects*, Copenhagen, 1999, p. 78.

8 Finnemore, *op. cit.*, pp. 161-168; for the Nordic approach see Danish Institute of International Affairs, *op. cit.*, p. 12.

9 Gerard J. Tanja, 'Humanitarian Intervention and Humanitarian Assistance: An Echo from the Past and a Prospect for the Future', in European Commission, *Law in Humanitarian Crises Access to Victims: Right to Intervene or Right to Receive Humanitarian Assistance?*, Vol. II, Luxembourg, Office for Official Publications of the European Communities, 1995, p. 73 (particularly footnote 14); for the Nordic approach see: Danish Institute of International Affairs, *op. cit.*, p. 79.

10 Parekh, *op. cit.*, p. 143; for a brief account of the UN system in terms of use of force see Tanja, *op. cit.*, pp. 79-81; Nigel S. Rodley, 'Collective Intervention to Protect Human Rights and Civilian Populations: The Legal Framework', in Rodley (ed.), *To Loose the Bands of Wickedness*, London, Brassey's Ltd, 1992; Richard Connaughton, 'Military Intervention and UN Peacekeeping', in Rodley (ed.), *op. cit.*

11 For an account of the issue see: John Charvet, 'The Idea of State Sovereignty and the Right of Humanitarian Intervention', *International Political Science Review*, Vol. 18, No. 1, 1997; also for the description of this tension see Tanja, *op. cit.*, 68; Kenneth R. Himes, 'The Morality of Humanitarian Intervention', *Theological Studies*, Vol. 5, Issue 1, March 1994; Thomas G. Weiss and Jarat Chopra, 'Sovereignty under Siege: From Intervention to Humanitarian Space', in M. Gene Lyons and Michael Mastanduno (eds.), *Beyond Westphalia?: State Sovereignty and International Intervention*, Baltimore, Johns Hopkins University Press, 1995, pp. 96-101.

12 For a brief history of these cases see Finnemore, *op. cit.*, pp. 175-180; and Danish Institute of International Affairs, *op. cit.*, pp. 88-89.

13 Danish Institute of International Affairs, *op. cit.*, p. 88; Roberts, *op. cit.*, p. 434.

14 Knudsen, *op. cit.*, p. 149.

15 Danish Institute of International Affairs, *op. cit.*, p. 88; actually as in the pre-Charter period there is also a controversy about the cases to be cited as examples of humanitarian intervention due to the different definitions of the term. The number of instances seems to vary between four and nine. See Oliver Ramsbotham, 'Humanitarian Intervention 1990-5: A Need to Reconceptualize?', *Review of International Studies*, 1997 (23), p. 451 (also footnotes 31-43).

16 The avoidance of interveners' use of this argument was illustrative of this point. For example, in UN Security Council, India initially justified its military action partly on grounds of humanitarian intervention. These statements were later deleted from the final record of the Security Council and India alleged that Pakistan had attacked India first. Roberts, *op. cit.*, p. 434 (particularly footnote 19).

17 Danish Institute of International Affairs, *op. cit.*, p. 95.

18 Saddam's repression of the Kurdish population before and after the end of the Cold War is illustrative of this point. See Jack Donnelly, 'Human Rights, Humanitarian Crisis, and Humanitarian Intervention', *International Journal*, Vol. XLVIII, No. 1, autumn 1993, pp. 628, 632; Roy Isbister, 'Humanitarian Intervention: Ethical Endeavours and the Politics of Interest', *Briefing on Humanitarian Intervention*, No. 1, The International Security Information Service (UK), May 2000, <http://www.isisuk.demon.co.uk/0811/isis/uk/hiproject/no1.html>

19 See Woodhouse, Tom and Ramsbotham, 'Peacekeeping and Humanitarian Intervention in Post-Cold War Conflict', in T. Woodhouse, R. Bruce and M. Dando (eds.), *Peacekeeping and*

Peacemaking: Towards Effective Intervention in Post-Cold War Conflicts, New York, Macmillan Press Ltd, 1998, pp. 40-41.

20 Danish Institute of International Affairs, *op. cit.*, p. 36; Chantal de Jonge Oudraat, 'Intervention in Internal Conflicts: Legal and Political Conundrums', Carnegie Endowment for International Peace Working Paper 15, August 2000, p. 11.

21 Oliver Ramsbotham, 'Humanitarian Intervention: The Contemporary Debate', in Roger Williamson (ed.), *Some Corner of a Foreign Field*, London, Macmillan Press Ltd, 1998, p. 64; Ramsbotham, 'Humanitarian Intervention 1990-5: A Need to Reconceptualize?', p. 453; James O. C. Jonah, 'Humanitarian Intervention', in T. G. Weiss and L. Minear (eds.), *Sustaining Civilians in Times of War*, London, Lynce Reinner Publishers, 1993, p. 70; for a discussion of the difference between the international human rights law and humanitarian law see: Catherine Guicherd, 'International Law and the War in Kosovo', *Survival*, Vol. 41, No. 2, summer 1999, p. 21; also see H. McCoubrey, *International Humanitarian War*, Aldershot, 1990.

22 C. Greenwood, 'Is There a Right of Humanitarian Intervention', *The World Today*, February 1993, p. 40.

23 Here, 'multilateralism' does not necessarily mean any UN umbrella. Rather, it might be under UN authorisation or in the form of self-help by states that come together.

24 Finnemore, *op. cit.*, p. 176.

25 Donnelly, *op. cit.*, p. 630. For a discussion of multilateralism vs. unilateralism, see Donnelly, *op. cit.*, pp. 626-632; Finnemore, *op. cit.*, p. 176; Christopher M. Ryan, 'Sovereignty, Intervention, and the Law: A Tenuous Relationship of Competing Principles', *Millennium: Journal of International Studies*, Vol. 26, No. 1, 1997, p. 94.

26 Danish Institute of International Affairs, *op. cit.*, pp. 64-68; Roberts, *op. cit.*, pp. 436-444; Comfort Ero and Suzanne Long, 'Cases and Criteria: The UN in Iraq, Bosnia and Somalia', in Roger Williamson (ed.), *Some Corner of a Foreign Field*, London, Macmillan Press Ltd, 1998, pp. 157-161; James O. C. Jonah, 'Humanitarian Intervention', in T. G. Weiss and L. Minear (eds.), *Sustaining Civilians in Times of War*, London, Lynce Reinner Publishers, 1993, pp. 69-79; Caroline Thomas and Melvyn Reader, 'Human Rights: A Case for Caution', in Jan Nederveen Pieterse (ed.), *World Orders in the Making*, London, Macmillan Press Ltd, 1998, pp. 114-124.

27 Ero and Long, *op. cit.*, pp. 157, 164; Pease and Forsythe, *op. cit.*, p. 303; Himes, *op. cit.*, also for the positions of different scholars on this issue see footnotes 20-24; it must also be noted that though some scholars refer to Southern Rhodesia and South Africa as examples from the Cold War period (Danish Institute of International Affairs, *op. cit.*, p. 63), some others argue that they were not as explicit as Resolution 688 (Pease and Forsythe, *op. cit.*, p. 303).

28 Oudraat, *op. cit.*, pp. 1,6.

29 Danish Institute of International Affairs, *op. cit.*, p. 80, also for a detailed discussion of the issue see pp. 77-95; even Weiss and Chopra believe that international lawyers have agreed on the validity of the concept "but disagreed on whether or not to codify the objective conditions under which it should be carried out", in Himes, *op. cit.*, footnote 11.

30 Verwey, *op. cit.*; for a description of this way of thinking see Ramsbotham, 'Humanitarian Intervention 1990-5: A Need to Reconceptualize?', *op. cit.*, p. 448 (and footnote 16).

31 Tanja, *op. cit.*, p. 89.

32 Guicherd, *op. cit.*, p. 23; Tanja, *op. cit.*, p. 90 refers to the proponents and the opponents; also Himes, *op. cit.*, reviews these discussions.

33 Weiss and Chopra, *op. cit.*, p. 106.

34 Himes, *op. cit.*; Michael J. Smith, 'Humanitarian Intervention: An Overview of the Ethical Issues',

Ethics & International Affairs, Vol. 12, 1998.

35 Danish Institute of International Affairs, *op. cit.*, pp. 90-93; since the warring parties had agreed to the intervention and the Security Council later endorsed it, some authors exclude Liberia; Ronzitti, *op. cit.*, p. 52.

36 Danish Institute of International Affairs, *op. cit.*, pp. 94-95; but Ronzitti is against the emergence of such a right even after Kosovo because it lacks both elements of international custom; *opinio iuris* and *diuturnitas*; Ronzitti, *op. cit.*, p. 52. See also Jonathan I. Charney, 'Anticipatory Humanitarian Intervention in Kosovo', *American Journal of International Law*, Vol. 93, No. 4, October 1999. Weiss and Chopra, two outspoken defenders of humanitarian values, are also of the opinion that though there have been many achievements towards "erosion of sovereignty and expansion of humanitarian assistance, it is still not yet a norm"; Weiss and Chopra, *op. cit.*, p. 89.

37 The Rwanda case is quite illustrative in this regard; see John Roper, 'The Foreign Policy of Western Countries: The Problem of Intervention', in Roger Williamson (ed.), *Some Corner of a Foreign Field*, London, Macmillan Press Ltd, 1998, p. 210.
