

**Making a Decision to Intervene: Adaptive Guidelines to  
Humanitarian Intervention**

By

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**Making a Decision to Intervene: Adaptive Guidelines to  
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## Chapter 1: Introduction and Purpose of Thesis

"We must all accept that we cannot abuse the concept of national sovereignty to deny the rest of the Continent the right and duty to intervene when, behind those sovereign boundaries, people are being slaughtered to protect tyranny."

—Nelson Mandela

The concept of humanitarian intervention in international law is relatively new.

International law initially focused on the protection of states' rights and sovereignty<sup>1</sup>.

After the failure of the League of Nations, it was apparent that all major powers must be permanent members of an organization in order for it to be successful and last the test of time. Consequently, with the foundation of the United Nations, the Permanent five or P5 (Britain, France, China, Russia, and the United States) of the United Nations Security Council (UNSC) were granted exceptional authority; veto power. Veto power empowered the leading, powerful states, and it has enabled the UN to outlast the lifespan of The League of Nations<sup>2</sup>. The founding of the veto vote greatly affected international issues, including the issue of humanitarian intervention.

Chapter 7 of the United Nations empowers the United Nations Security Council to approve intervention into a state. If any P5 state imposes its veto vote, the intervention

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<sup>1</sup> The colonization period led to former colony states demanding respect for sovereignty and former colonies to demand the same

<sup>2</sup> In December 1939 The League of Nations expelled the Soviet Union after it attacked Finland. Although this may be viewed as an appropriate punitive measure – this action conveyed a weakness, without states retaining membership discussion and debate could not ensue. The League lost their potential ability to influence the USSR's policies by expelling them.

measure will not receive approval, without this approval an intervention action by a state or group of states is considered illegal under international law. Chapter 7 codifies the process by which a coalition or state may gain the authority to intervene upon another state. There is an exception to this authorization process, which will be discussed in the following chapters, named the “Excusable Breach”; a term popularized by intervention scholar Jane Stromseth, which suggests that if a coalition of states intervenes in a critical situation, they do not need explicit permission from the UNSC to have their operation be deemed legal under international law.

The bipolar world that ensued during the Cold War conveys the level of influence and interdependence between states even at that time. Globalization is not a recent phenomenon. After the conclusion of the Cold War, the international community recognized the reach of states’ policies. Looking back at the Cold War, one recognizes that every time the President of The United States or the President of the USSR made a decision, a ripple effect ensued on a global scale. The world was connected, and with the improvement and development of technology, the international community is connected more than ever before. This connectedness has altered our perception about a multitude of issues, including humanitarian intervention.

With the rise of globalization and the exponential improvement of technology, the international community learns of atrocities within mere seconds or minutes. The only

question that remains is whether it is the responsibility, or only the right of states to intervene upon a state that is abusive towards its people. Hugo Grotius<sup>3</sup> stated that humanitarian intervention was a right of nations due to the natural law *societas humana* which conveys the universal society of mankind<sup>4</sup>. Other scholars suggest that it is the responsibility of states to intervene when atrocities such as crimes against humanity and genocide are occurring. Scholars that believe the latter, including Nicholas Wheeler, also suggest that humanitarian intervention is gaining traction as an emerging norm.

Affected greatly by recent actions and inactions, international perception of humanitarian intervention has evolved. This thesis will examine the case studies of Kosovo, Somalia, and Libya. It is imperative to recognize that these case studies, although significant, are not the only cases that have affected the perception of intervention. Inaction in Rwanda and action in Iraq have also shaped international policies of intervention and intervention decisions. The case studies selected have all contributed to the discussion of the perception and increased acceptance of the practice of intervention.

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<sup>3</sup> Considered the 'father' of international law

<sup>4</sup> Grotius, Hugo. *De Jure Belli as Pacis*. Book II, Chapter 25, Section 8, Volume 11. Oxford : Oxford University Press, 1925

To discuss humanitarian intervention, there needs to be an establishment of a working definition of the term itself. The term 'humanitarian intervention' is vague in nature. What can one define as humanitarian? How can one verify 'humanitarian' grounds and motivations as opposed to strategic interests? As for the term 'intervention', that could also convey a multitude of actions. Threats of action or sanctions are not military measures, but they are implementations of intervention. Recognizing that international law is constantly evolving, definitions are significant; words can come to have different meanings, and those definitions will have different legal ramifications. Therefore, in this thesis, arguments will be based on humanitarian intervention being an *armed intervention by a coalition of states into another state to end or prevent mass humanitarian atrocities like genocide, war crimes, and ethnic cleansing from occurring.*

Purpose of thesis:

- Examine multilateral humanitarian intervention as a universal norm of international law
- Analyze the decision making process, including the political and moral reasons, justifications, procedures, and criticisms for the interventions in Somalia, Kosovo and Libya to determine the existence of guiding commonalities.

- Propose model guidelines based on existing and emerging legal principles applicable in situations requiring humanitarian intervention.

## Chapter 2: Status of Humanitarian Intervention

Many scholars such as Ignatieff, Brown, Keohane, and others have discussed the issue of humanitarian intervention and its status in international law. This thesis will examine the positions taken by Nicholas Wheeler, Allen Buchanan, Jane Stromseth, and Michael Burton.

States have employed the practice of humanitarian Intervention since the early 1800s, yet nowhere have states codified its meaning in international law. The reasons for this omission is understandable – the difficulty of formulating a general principle to cover a multitude of situations, the opportunity for its misuse; and the complex nature of achieving stability and beginning nation building, or other factors like geography or culture<sup>5</sup>.

Despite the lack of firm legal foundation, many scholars such as Nicholas Wheeler have observed that multilateral humanitarian intervention is achieving a normative status,

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<sup>5</sup> Unfamiliar terrain and cultures is a factor when considering intervention, i.e. Afghanistan conveys the complexity of military operations due to the tough terrain and the Eastern, Muslim, and Pashtun culture. Although the operations in Afghanistan are not of a humanitarian intervention, it conveys the complexity of the decision to intervene. You cannot operate the same way in every country. Intervention in Kosovo must be dealt differently than the Somalia intervention. Cultures and customs, and familiarity with them are imperative. NATO's partnership with Qatar and the UAE in the Libya intervention is evident of this.

which leaves the international community with a sense of obligation, but without a clear path of action.

The process of authorizing an intervention is codified in the UN Charter: a state must make an appeal to the United Nations Security Council by which the committee may authorize military action in accordance with Chapter 7 of the UN Charter.

**NATO Intervention in Kosovo & Emergence of *Excusable Breach Clause*:**

Jane Stromseth echoes this view based on the international community's acceptance of NATO's intervention into Kosovo and the "Excusable Breach Clause."<sup>6</sup> Stromseth argues that with humanitarian intervention slowly moving towards normative status, coalitions of states that can document mass atrocities can take action without the UNSC's permission – or, more importantly, fear of condemnation.

Scholars such as Allen Buchanan, argue that for an action to reach a normative value it must have the support of the majority of citizens.<sup>7</sup> Buchanan conveys the difficulty and

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<sup>6</sup> Stromseth, Jane, "Rethinking Humanitarian Intervention", Cambridge University Press 2003, p.244-252

<sup>7</sup> Buchanan, Allen. "The Internal Legitimacy of Humanitarian Interventions". Volume 7, Issue 1. Journal of Political Philosophy, 16 December 2002.

complexity of humanitarian intervention achieving normative status due to the level of consent within states that are proponents of intervention. Buchanan is more skeptical of intervention currently being an emerging norm. Buchanan further asserts that intervening states need the majority support of the intervening state's public to provide legitimacy and credibility to the state and its decisions.

Buchanan further asserts that it is not the 'duty' of states to intervene upon other states, but states *do* have a responsibility and duty to their citizens. Intervention assumes "that among the legitimate activities of a state are undertakings whose primary aim is to protect the rights of persons who are not its citizens." Buchanan states that the latter is unjustifiable. States are only responsible for their citizens, not the international community. Although states (and their citizens) may decide to intervene, it is not an obligation to act. Buchanan presents these arguments to contradict the notion that multilateral intervention is an emerging norm.

Opposing the above arguments, Wheeler insists that over the last two decades the world has witnessed the emergence of a new norm authorizing military intervention on humanitarian grounds. Wheeler argues this is a recent development, emerging in the 1990s with the Kurdish situation in Iraq, the intervention in Somalia, and the inaction in Rwanda.

Wheeler argues that another critical step towards the emergence of a norm in regards to humanitarian intervention is the NATO intervention into Kosovo. Although NATO states in the Security Council wanted to intervene in Kosovo, they faced opposition. The UNSC did not approve a military intervention, and Russia, China, and India had been standing firm against military action in Kosovo.

The majority of the members of the council did not agree with the 'opposition triple entente' and refused to condemn the bombings or call for them to cease. The concept of 'sovereignty as responsibility' was invoked by Argentina to justify the bombings<sup>8</sup>; Yugoslavia had been unable to stop the atrocities and ethnic cleansing and therefore the international community had to take action. Furthermore, the United States was determined not to risk non-involvement, "The Clinton Administration had been stung by criticisms of its inaction over Rwanda, and especially Bosnia, and it was determined to prevent another humanitarian catastrophe in Kosovo"<sup>9</sup>. The Clinton administration wanted to take action, and with the support of NATO, they did; without UNSC approval.

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<sup>8</sup> Wheeler, Nicholas. "The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society", Chapter 3

<sup>9</sup> Ibid 8

On March 26, 1999 the Russian delegation drafted a resolution demanding a halt to the bombings in Kosovo<sup>10</sup>. At that time, five members of the UNSC were NATO members, but seven were not: Slovenia, Argentina, Brazil, Bahrain, Malaysia, Gabon, and Namibia. Many speculate that countries vote out of fear, or self interest. However, the seven non-NATO members did not have to publicly voice their opinions – but Bahrain and Malaysia chose to do so. The Bahraini representative even said that he could not support the resolution because it would have done nothing to rectify “the humanitarian crisis of tremendous proportions”<sup>11</sup>. From this latter statement, one may conclude that states do not vote solely based upon Western influence or fear. Rather, they vote based on the information available to them.

Although there was resistance towards the Kosovo intervention, the action was not condemned. Stromseth, as mentioned earlier, argues that the Kosovo intervention is proof of the ‘excusable breach clause’, where a coalition of states intervenes when a humanitarian crisis is occurring in another state<sup>12</sup>. The Foreign Ministers (of the Non-Aligned Movement) reaffirmed this in Cartagena, nation, in April 2000, with a clear statement condemning unilateral action<sup>13</sup>. The fact that the group did not condemn a

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<sup>10</sup> Wheeler, Nicholas. *Saving Strangers: Humanitarian Intervention in International Society* (paperback). Oxford: Oxford University Press 2002.

<sup>11</sup> Ibid 8

<sup>12</sup> Ibid 6

<sup>13</sup>“ We wish to reiterate, however, that it is of paramount importance that the new opportunities, challenges and problems be addressed by following strictly the United Nations Charter. In this context, we wish to reaffirm the principles

coalition's right to intervene in states in crisis, suggests that the excusable breach 'norm' had gained momentum.

However, even with these considerations of excusable breaches and precedents, realists continue to oppose 'humanitarian' intervention. Realist theorists like Morgenthau or Kennan<sup>14</sup> convey the inevitable pursuit of self-interest.

#### **SC Resolution 688 – Kurds in Iraq & The Principle of *Sovereignty as Responsibility*:**

On April 5<sup>th</sup>, 1991 The United Nations Security Council (UNSC) voted on Resolution 688, "ten votes to three (with two abstentions) to term the Iraqi government's oppression of

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of the Non-Aligned Movement as well as the principles and purposes of the United Nations Charter. We also want to reiterate our firm condemnation of all unilateral military actions including those made without proper authorization from the United Nations Security Council or threats of military action against the sovereignty, territorial integrity and independence of the members of the Movement which constitute acts of aggression and blatant violations of the principle of non-intervention and non-interference."

<sup>14</sup> Kennan, George. "Realities of American Foreign Policy". Princeton, N.J: Princeton University

Press, 1954. Morgenthau, Hans. "In Defense of the National Interest". New York: Knopf Publishing, 1952, and "Politics Among Nations". 5th edn. New York: Knopf Publishing, 1973

the Kurds and Shiites as a “threat to the peace”<sup>15</sup>. The passage of this resolution was unprecedented. For the first time in its history, the UNSC had transgressed the inviolability of state sovereignty and had identified an internal conflict as a threat to international peace and security.

Although Resolution 688 broke precedent, the UNSC failed to impose “the threat of enforcement action”<sup>16</sup>, making the resolution less powerful than first appearance. Also of note is the UNSC failure to approve a French resolution to intervene on behalf of the Kurds a few days previously. Therefore one must be cautious on how much weight this resolution carried in terms of the creation of a new norm of intervention.

When Iraq refused to stop oppression of the Kurdish population, the USA, UK, France, and The Netherlands deployed military forces<sup>17</sup> to Iraq to create ‘safe havens’ for the Kurdish population. However, this action was not legally authorized by the UNSC, President Bush instead claimed it as a legitimate action, but steered clear from suggesting the action was in fact legal. This claim for legitimacy, as opposed to solidifying an argument in law, creates a diversion for the public. President Bush claimed legitimacy and credibility, without legal foundation. It is imperative to note because it

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<sup>15</sup> Ibid 8

<sup>16</sup> Ibid 8

<sup>17</sup> Ibid 9

conveyed the American perspective towards international law and procedures during the Bush Presidency.

In explaining the coalition's reasons for the intervention, President Bush relied on Paragraph six of the resolution which called on the member states to contribute to the effort of humanitarian relief efforts, and emphasized, "I want to underscore that all we are doing is motivated by humanitarian concerns"<sup>18</sup>.

Wheeler also mentions Skinner's perspective on norm creation, whereby states try to create normative ideals or actions by legitimizing their actions, and conveying to the global community that the actions are not deviations. President Bush claiming the Iraqi intervention as legitimate and responsible, he was sending a clear message to the global community – 'this was expected of us' and 'this was the responsible course of action to take'.

#### **SC Resolution 794 on Somalia:**

The next step towards the creation of a humanitarian intervention norm, according to Wheeler, was the conflict in Somalia. On December 3<sup>rd</sup>, 1992 the UNSC voted unanimously for Resolution 794 that authorized member states to use force to regain

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<sup>18</sup> Ibid 8

stability in the state since it had been facing turmoil due to starvation and rampant terrorism. In this case, there is a consensus among scholars that the concerns of the UNSC were based completely on humanitarian considerations especially since Resolution 794 was passed unanimously. With no functioning government, and its people in crisis, the UNSC authorized member states to intervene. As historic as this was, there were words used like “unique” and “exceptional” during this process that conveyed a hesitance, for fear that this action would create a new norm, perhaps. The UNSC did vote unanimously to support Resolution 794, but states needed to explain their decisions. By making statements conveying the severity and uniqueness of the situation in Somalia, states are sending a message: intervention is not to be expected. However, there is evidence that counters the latter, “the emerging norm to protect civilians from the collapse of legitimate institutions was further reinforced by the international interventions in Bosnia-Herzegovina and Haiti”<sup>19</sup>. States serve their interests, but being a part of a larger international community connotes responsibility, and this is evident when the international community once again intervened in the Balkans and Haiti.

### **Rwandan Inaction:**

In 1994, almost one million people were massacred in Rwanda while the world stood idly by. The Hutu tribes systematically killed their fellow countrymen, the Tutsis. This

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<sup>19</sup> Ibid 8

genocide occurred over the course of three months, and the international community failed to act even though they were aware of the situation. The failure to protect the people of Rwanda has reinforced the idea of intervention, and 'sovereignty as responsibility'<sup>20</sup>. Sovereignty as responsibility suggests that states may retain authority and sovereignty only as long as they do not grossly abuse their positions and people. The guilt carried by the international community conveys that a norm may truly have been established; due to the lack of intervention, many people died. That inaction has still not been forgotten. Countries are entrusted to protect their citizens, but should they abuse that privilege than the concept of 'sovereignty as responsibility' comes into play. If a state cannot protect its people, from a foreign or internal source of conflict, then the international community may take action and infringe upon a state's sovereignty.

### **Responsibility to Protect:**

In September 2000, the Canadian government formed The International Commission on Intervention and State Sovereignty (ICISS) to address the question of intervention. The commission discussed political, legal, moral, and operational concerns and issued a report in 2001 dubbed *The Responsibility to Protect* (herein after referred to as R2P).

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<sup>20</sup> Ibid 8

The term R2P did not gain momentum until The United Nations General Assembly (UNGA) World Summit in 2005. The Responsibility to Protect concept has garnered considerable support and criticism. It is imperative to recognize that although the concept of R2P is based on the ICISS report, modifications have been made, and some of the stronger language has been removed<sup>21</sup>. To discuss R2P, it is imperative to understand the 'Three Pillars' that Secretary General Ban Ki Moon authored:

“- Pillar One stresses that States have the primary responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

- Pillar Two addresses the commitment of the international community to provide assistance to States in building capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

- Pillar Three focuses on the responsibility of international community to take timely and decisive action to prevent and halt genocide, ethnic cleansing, war crimes and crimes against humanity when a State is manifestly failing to protect its populations.<sup>22</sup>”

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<sup>21</sup> The concept of sovereignty as responsibility is among the 'Core Principles' stated in the ICISS report, but that idea is not reflected in Ban Ki-Moon's Three Pillars. It is an idea that is less 'popular', even an implication of a loss of sovereignty causes controversy

<sup>22</sup> Ki-Moon, Ban. "Report of the Secretary General: Implementing The Responsibility to Protect" International Coalition for The Responsibility to Protect 12 January 2009

There is no new language or requirement. R2P calls for action when systematic and gross violation of human rights and international, including ethnic cleansing, war crimes, genocide, and crimes against humanity. R2P reaffirms the belief that states have a responsibility to act when atrocities are occurring, but legislation such as the Genocide Convention already encompasses that language.

Not surprisingly, many theorists such as Ernie Regehr<sup>23</sup> have claimed that R2P is a concept that has yet to be fully developed; as a new concept, caution is required<sup>24</sup>. The urgency that states in need experience surpasses the inexperienced UNSC in matters of intervention and authorization. The genocide in Rwanda occurred over the course of approximately 100 days, and although no action was taken, one should consider how many people had already lost their lives had the decision to intervene not occurred till 50 days later. Simply put, the development of the process of intervention (and implementation of R2P) is not able to respond in a timely or consistent<sup>25</sup> fashion, yet. Regehr asserts that the Libyan intervention is a reflection of the implementation of R2P since the decision was not dismissed due to a veto vote by any of the P5<sup>26</sup>. In addition, given Western economic hegemony, many states may agree with the R2P concept

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<sup>23</sup> Research Fellow at the Institute of Peace and Conflict Studies

<sup>24</sup> Regehr, Ernie. "Are R2P Interventions as Inconsistent as the Critics charge?" *Disarming Conflict*, 21 April 2010

<sup>25</sup> Why was R2P not sited in arguing for interventions in Syria or Bahrain? Application is questionable in both Libya and Kenya (as you will see below) and it conveys a fault in terms of consistency.

<sup>26</sup> The ICISS report called upon the P5 not to use their veto power when discussing intervention operations; the report calls upon those states to abstain

simply out of fear or interest. In fact, many state that the concept of humanitarian intervention in general is a product of Western hegemony and possibly even coercion<sup>27</sup>.

R2P calls for a responsibility to prevent, a responsibility to react, and a responsibility to rebuild. These concepts each contain a tremendous amount of action; by prevention the R2P could mean exhausting peaceful negotiations, sending aid, providing education or attempt to halt any crisis that is about to occur. As for the responsibility to react, that implies unconditional, yet proportional action, but a possibility of success is paramount also. In terms of the responsibility to rebuild, that implies a long-term relationship including financial assistance and training; it conveys a responsibility towards nation building. All of these responsibilities encompass a great commitment, and this may in fact deter states from intervening in times of crisis.

On the other hand, it does provide a more realistic picture of what a tremendous commitment humanitarian intervention is. Furthermore, R2P calls on the Permanent 5 of the UNSC to not use their veto power, so who should decide if the UNSC cannot? The following actions were recommended by R2P if the UNSC could not agree:

- I. "Consideration of the matter by the General Assembly in Emergency Special Session under the "Uniting for Peace"<sup>28</sup> procedure; and

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<sup>27</sup> Ibid 8

<sup>28</sup> "*Resolves* that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General

II. Action within area of jurisdiction by regional or sub-regional organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorization from the Security Council.

B. The Security Council should take into account in all its deliberations that, if it fails to discharge its responsibility to protect in conscience-shocking situations crying out for action, concerned states may not rule out other means to meet the gravity and urgency of that situation - and that the stature and credibility of the United Nations may suffer thereby.”

The above measures indicate alternate options to impose intervention actions, but they are extreme actions; any course of action by the GA must still have the support of at least one P5 member according to the Uniting for Peace resolution. Therefore, the power remains with the P5<sup>29</sup>.

One situation where the concept of R2P has come into practice is the 2007 Kenyan elections. Kenya devolved into chaos following a very divisive election in 2007. In response to the urgency of the situation, the African Union appointed a mediation team led by UN Secretary-General Kofi Annan to quell the riots and the divisiveness of the

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Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the **use of armed force when necessary, to maintain or restore international peace and security**. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefore. Such emergency special session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the Members of the United Nations” - Many have argued that Western hegemony plays a large role in this scenario since hegemonic states can control or influence GA members to vote according to their wishes.

<sup>29</sup> Tomuschat, Christian. “Uniting for Peace”. UN Audiovisual Library of International Law. 2001.

people of Kenya. After investigating the situation for more than a month, Annan's mediation team proposed a government based on power sharing among the leading parties.

Although the term was not publicly stated when the crisis in Kenya was ongoing, many hail that this was an application of R2P. R2P, as a term, has failed in application, possibly for fear of implying a loss of sovereignty. It has not become a universal term, and it is unknown to many. The concept of 'Genocide' for example, is a universal one – R2P is yet to gain that status. However, one must take into consideration that the term R2P gained international traction at the World Summit in 2005, and Lemkin wrote the Genocide convention over sixty years ago.

### **Evaluation of Emergent Norms Regarding Humanitarian Intervention**

The following paragraphs will include an analysis of the status of multilateral humanitarian intervention as an emergent norm in international law, examining both the supportive and counter arguments.

#### **Supportive Arguments:**

Humanitarian intervention as a concept, and as a norm, has gained traction according to Stromseth and Wheeler. Intervention has become more common however, and the global interdependency that globalization has given us has made us more concerned about other countries.<sup>30</sup> Wheeler also suggests that intervention is occurring more often on purely humanitarian grounds, which is somewhat speculative – many would state that it is self-interest that motivates countries. Buchanan and realist theorists would disagree; Iraq has oil and is too close to other major oil providers, Somalia is a haven for terrorists and is strategically placed in terms of geopolitics and trade, the Balkans are situated too close to the Western hegemons, and Libya provides a significant amount of European oil. No matter the motivations behind intervention, it occurs more often, and it is starting to appear more and more “normal” in terms of international relations.

Although scholars like Wheeler suggest the increasing occurrence and acceptance of humanitarian intervention in the international community, there are still many legal questions that arise in these discussions. Legal scholars like Burton and Brown have tried to gain insight into intervention by reviewing the concept of unilateral intervention.

Although Burton’s law review concerning unilateral humanitarian intervention occurred before the intervention in Kosovo, his arguments still add to the debate about codifying

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<sup>30</sup> I.e. if Saudi Arabia decreases oil production, the global oil market suffers

the process of humanitarian intervention. Burton agrees that Kosovo provided a precedent for an excusable breach, but what Burton discusses under the guidance of his Professor, Jane Stromseth, is the multiple obstacles states' face when contemplating intervention. The United Nations Security Council's veto power has left many states that are willing to take action in fear of violating international law even when atrocities are obviously occurring.

Burton calls the current approach to taking the course of intervention "sub-legal"<sup>31</sup> rendering willful countries powerless, and granting the power of authority to five countries that are permanently in their positions. Burton suggests that a General Assembly resolution would allow codification of unilateral intervention. Although unilateral interventions have been discouraged in the international community, the suggestion for a GA resolution is not unwarranted. It exposes the decision making process to all members of the United Nations. Although many speculate that the GA is largely a symbolic body, there is no reason why the UN cannot empower the assembly. The empowerment of the GA could lead to a greater distribution of the decision making process, and potentially allow for more consistent rulings on intervention considerations. For example, the Uniting for Peace resolution could be the new authorization process.

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<sup>31</sup> Michael Burton, "Legalizing the Sublegal: A Proposal for Codifying a Doctrine of Unilateral Humanitarian Intervention" *Georgetown Law Journal*, December 1996, 85 *Geo. L.J.* 417 & Stromseth, Jane, "Rethinking Humanitarian Intervention", Cambridge University Press 2003, p.244-252

Considering Michael Levitin's "Liberation of Paris Principle," which measures the legitimacy of intervention by the reaction of the liberated, one begins to question the intent behind Burton's arguments. Levitin, "If the people throw flowers, the invasion is lawful; if they do not throw flowers, or if they throw anything else, the invasion is unlawful." Presumably, those otherwise facing mass execution would "throw flowers." Arguing the legitimacy of an intervention by these means appears inane. It is an arbitrary judgment, and an inaccurate measurement, and Burton knows this "While these measures are of *primarily symbolic value*, they may nonetheless prove politically expedient by helping to assuage concerns that yet another chink has been made in the rusting armor of state sovereignty" therefore it is somewhat confusing why he included this argument at all. Burton is attempting to make a case to codify unilateral humanitarian intervention, only arguments that can further his purpose should be included, especially when he stated earlier "consent of the people may be presumed in cases where thousands of people face extermination"<sup>32</sup>. Burton's suggestion to empower the GA however appears to have two dimensions: symbolism and granting wider authority. The P5 of the UNSC have ultimate decision-making control, and with both China and Russia generally opposed to sovereignty infringement, states are sometimes rendered powerless.

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<sup>32</sup> Ibid 31

## Criticisms and Counter Arguments

As one may observe, there are many differences with regard to humanitarian intervention in terms of authorization and implementation. Buchanan and the realist theorists do present compelling arguments, and they do convey the hesitancy towards establishing humanitarian intervention as a norm but they do not account for the popularity of R2P and other developments such as the excusable breach clause. Buchanan's argument of 'right' vs. 'duty' however is the most compelling, and it does pose a legitimate concern to Wheeler and Stromseth's arguments.

When discussing the Kosovo intervention, scholar Bartram Brown is cautious about the concept commonly known as an excusable breach<sup>33</sup>, "When a vague doctrine can be invoked by states to justify the use of force, it offers them a license that is subject to abuse. This justification for the use of force is inherently threatening to other states, particularly when those states claiming this license are the most powerful states in the international community."<sup>34</sup> Powerful states will always be more able to impede upon other states, and international laws need to be weary. The UN charter allows the use of force in only two cases, self-defense and authorized action by the UNSC. However, given the precedent set by Kosovo, the UN's stipulations become less significant. Brown is also cautious to remind the reader not to disclude the motivation of self-interest in the application of intervention.

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<sup>33</sup> Which is argued by Stromseth

<sup>34</sup> Brown, Bartram. Humanitarian Intervention and Kosovo: Humanitarian Intervention at a Crossroads, William & Mary Law Review, May 2000

Some scholars however, are more aggressive in regards to the implementation of humanitarian intervention. Ignatieff suggests that when intervention is undertaken, the countries intervened upon should become “protectorates”<sup>35</sup> of the states that assisted them. One may easily claim that this is a return to colonization. The idea is highly controversial because colonization is a reflection of recent history. Hong Kong only became independent from British control in 1997. However, Ignatieff is not alone in this opinion. Keohane suggests a similar course, whereby a state, after it has been intervened upon, should not regain total sovereignty – the intervening powers should be a partner authority in the state until stability and credibility are established.

Determining the status of humanitarian intervention is based on perception and one’s analysis, but this thesis regards multi-lateral humanitarian intervention as an emerging norm in international law and international society.

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<sup>35</sup> Ignatieff is a proponent of human rights and humanitarian intervention, but argues that states must ‘follow through’ and are responsible for nation building. Ignatieff is also a proponent of humanitarian intervention being a moral issue, not just a political one.

## Chapter 3: Country Profiles

In order to further study the decision-making process for the course of humanitarian intervention, three case studies will be examined. The cases of Kosovo, Somalia, and Libya will be the foundation for the adaptive guideline this thesis will later introduce. These brief introductions will introduce the situations that led to external forces intervening; the purpose of this thesis is not to address the outcome or end result of the intervention, but only the decision to intervene.

### **Somalia:**

Somalia is a state only in name; lacking a credible government, and with its people suffering tremendously to this day, Somalia suffers from a lack of leadership and stability. On December 3<sup>rd</sup>, 1992 the UNSC voted unanimously for Resolution 794 that authorized member states “to use all necessary means to establish... a secure environment for humanitarian relief operations”<sup>36</sup>. The concerns of the UNSC were based completely on humanitarian considerations. With no functioning government, and a people in crisis, the UNSC authorized member states to intervene. As historic as this was, there were words used like “unique” and “exceptional” in resolutions that conveyed a hesitance, for fear that this action would perhaps create a new norm<sup>37</sup>.

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<sup>36</sup> Wheeler, Nicholas. “The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society”, Chapter 3p. 35

<sup>37</sup> Ibid 36

“Somalia was a real turning point... Somalia made people realize that when human rights reached a certain level, some kind of intervention was inevitable. There was an outcry among informed elites - people who knew what was going on- to do something”<sup>38</sup>. Before the intervention began, Somalia was already in crisis; severe drought, hunger, civil war and a mass refugee exodus into neighboring countries<sup>39</sup>. The intervention however, was not designed to solve every issue facing the Somali population, but rather to function in the capacity to assist NGOs with logistics and supplies by escorting convoys. Moreover, the intervening forces would construct and repair roads, dig wells, repair airfields, and open up the ports in Kismayu and Mogadishu<sup>40</sup>. Although the intervening forces wanted to oust General Aideed, the notorious warlord who violently opposed the US and UN forces, he was not the focus of the intervention. Aideed infamously ordered an attack on Pakistani peacekeepers; 24 peacekeepers lost their lives during that attack<sup>41</sup>. The attack resulted in the US placing a \$25,000 bounty on Aideed’s head – dead or alive. The intervention in Somalia was not successful, and although the intentions of the intervening forces appeared to be noble, they were not committed to Somalia in the wake of high casualties. Aideed even claimed to be President in 1995, after the withdrawal of the intervening forces. The attempt to capture Aideed is considered *mission creep* whereby the forces took steps beyond their objectives. The attempt to capture Aideed compromised the intervention.

For months in 1993, the American public watched images of starving women and children in Somalia so there was a public outcry to take action in Somalia. The media continued fueling the

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<sup>38</sup> George Ward (Former US Ambassador to Nigeria 1996-1999); Mertus, Julie, *Bait and Switch*, p. 119

<sup>39</sup> Mertus, Julie. *Bait and Switch: Human Rights and U.S. Foreign Policy*. Routledge Press, New York 2004, p.119

<sup>40</sup> Ibid 39

<sup>41</sup> Baumann, Robert and Yates, Lawrence and Washington, Versalle. *My Clan Against The World: US and Coalition Forces in Somalia 1992 to 1994*, Diane Publishing, May 2010

outrage. Many scholars attribute the intervention in Somalia to the constant images of starving women and children on the 24- hour news cycle. Colin Powell further fueled the discourse when he authored an article for *Foreign Affairs* justifying an intervention in Somalia. Not only did he claim it was just, but that an intervention could be successful. Although Powell, then the Chairman of the Joint Chiefs of Staff, was in support of intervention into Somalia, he was adamant about keeping the number of casualties low. Politically, high casualties would be devastating and possibly reverse political support and public sentiment.

Unfortunately, things would not go according to plan. The situation in Somalia was deteriorating, and the need for action was obvious, “By 1992, almost 4.5 million people, more than half the total number in the country, were threatened with starvation, severe malnutrition and related diseases. The magnitude of suffering was immense. Overall, an estimated 300,000 people, including many children, died. Some 2 million people, violently displaced from their home areas, fled either to neighboring countries or elsewhere within Somalia. All institutions of governance and at least 60 per cent of the country's basic infrastructure disintegrated”<sup>42</sup>. On October 3<sup>rd</sup>, 1993 US forces entered Aideed’s compound, based on a tip, to capture the General consequently overreaching the boundaries of the operation. 18 American soldiers died that day, alongside approximately 1000 Somali citizens for a mission that was not directly linked to the objective the coalition sought to achieve. The attack on the American soldiers’ helicopter was devastating; the soldiers’ bodies were dragged in the street as Aideed supporters reveled in their victory. These images shocked the conscious of the American public, and support for the Somali mission quickly diminished. Black Hawk Down would be the beginning of the end of the US presence in Somalia.

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<sup>42</sup> Department of Public Information, United Nations, Updated March 1997, <http://www.un.org/Depts/DPKO/Missions/unosomi.htm>

Somalia has changed the policy making process in terms of intervention; the US is always overcautious in terms of dispatching soldiers, always weary of casualty numbers. Many scholars theorize that Somalia is the reason why President Clinton ordered air strikes in the case of the former Yugoslavia; air strikes would sustain less American or coalition casualties than a ground operation. The latter is disheartening because Somalia was supposed to be an intervention to provide aid and logistical support and instead, the mission expanded – and overreached.

**Kosovo:**

In 1389, at the battle on the Field of Blackbirds, the Turks defeated the Orthodox Christian Serbs at the Fields of Blackbirds battle. Consequently, the Ottomans ruled the province, Kosovo, for five centuries. For this reason, the Serbian community has always been possessive towards Kosovo<sup>43</sup>. The historical importance of the Kosovo province is considered paramount to the maintenance of Serbian historical integrity. The province of Kosovo would also see an explosion in the Albanian population and a Serb exodus in the second half of the twentieth century. By the 1980s, ethnic Albanians, who composed approximately 90% of the population, faced increasing oppression from the Serbian government. The Kosovo Serbs began complaining of persecution by the Albanian community in the 1980s<sup>44</sup>, and the Kosovo Serbs received support for this claim, “They [Kosovo Serbs] received moral support from the nationalists in the Serbian Academy of Sciences and Arts. In an inflammatory public memorandum in 1986, the Serbian intellectuals

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<sup>43</sup> Power, Samantha. “A Problem From Hell: America and The Age of Genocide”. Harper Perennial Publishing; 3rd edition, 6 May 2003; p. 444

<sup>44</sup> Ibid 43

charged Kosovo Albanians with masterminding ‘the physical, political, legal, and cultural genocide of the Serbian population in Kosovo’<sup>45</sup>.

Milosevic only exacerbated this divide; in 1989 he stripped Kosovo of its autonomy that was granted to it by Marshal Tito<sup>46</sup>. Milosevic went even further and fired Albanians from their jobs, closed their schools, and the Serbian police force was also largely expanded.

The divisive sentiment gave way to the creation of the Kosovo Liberation Army, when Kosovo was not discussed at the Dayton Peace Accords, the Kosovo Albanians were determined to take charge of their own fate, and thus the KLA was created. Too long sentence The KLA promised to protect Kosovo Albanians and win independence for the province<sup>47</sup>.

As Yugoslavia began to separate, the global community, especially the American government, grew more concerned about the fate of Kosovo. President Bush’s “Christmas Warning”<sup>48</sup>; where Secretary of State Eagleburger warned Milosevic that if he were to attack Kosovo, the United States would pursue military action. The Christmas Warning is considered the first determining factor that would eventually lead to intervention.

President Clinton was hesitant about the use of force in Kosovo; military intervention into Kosovo was risky given its attachment to various countries in the region and Clinton feared that

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<sup>45</sup> Ibid 43

<sup>46</sup> Ibid 43

<sup>47</sup> Ibid 43

<sup>48</sup> Ibid 43

by intervening into Kosovo he would be unleashing a possible regional calamity. Bosnia had no such attachments, thus its case was more clear and the decision – easier. With the atrocities becoming more frequent, and more public, human rights groups “descended on the region”<sup>49</sup> and the pressure was mounting on Clinton to take action.

Richard Holbrooke attempted to negotiate with Milosevic in October 1998, promising that NATO would not pursue airstrikes if he would remove forces from Kosovo, and allow the entrance of 2000 international verifiers who would not be armed<sup>50</sup>. Milosevic did not honor his part of the agreement; on January 15<sup>th</sup>, 1999 Serbian forces attacked the town of Racak violently and executed forty five Kosovo Albanians. When Ambassador Walker<sup>51</sup> arrived on the scene only a day later, he found the mutilated bodies of victims, and proclaimed the actions crimes against humanity<sup>52</sup>. The reaction in Washington was that of shock and anger, “She [Madeleine Albright] and the rest of the Clinton team remembered Srebrenica, were still coming to grips with guilt over the Rwanda genocide, and were looking to make amends”<sup>53</sup>.

The United States and its allies decided to try negotiations one last time, in February 1999, they convened a conference at Rambouillet<sup>54</sup> to discuss an ultimatum with Milosevic’s Serbian forces, although he did not actually bother to attend. The United States and its allies would bomb the Serbian forces if they did not allow 25,000 peacekeepers into Kosovo, grant the Albanians

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<sup>49</sup> Ibid 43

<sup>50</sup> Ibid 43

<sup>51</sup> Head of verification mission

<sup>52</sup> Ibid 43

<sup>53</sup> Ibid 43

<sup>54</sup> A French chateau outside Paris

autonomy, and remove most of their troops from Kosovo<sup>55</sup>. Given the historical significance of Kosovo, the Serbs refused to consider the demands. to the Serbians, they did not even consider the deal. Supreme allied commander for Europe, General Clark, began bombing Serbian forces on March 24<sup>th</sup>, 1999.

NATO intended for the intervention to stop ethnic cleansing and save the Kosovo Albanians from enduring further human rights abuses and atrocities, but the intervention had unintended consequences. The Serbian forces rounded up Kosovo Albanians, separated the men from the women, often shooting the men and scaring the women into leaving Kosovo. An expulsion of 1.3 million Kosovo Albanians (estimate) from their homes occurred shortly after the NATO intervention began<sup>56</sup>. This mass exodus captured the attention of the global public; reporters flocked to the Kosovo province, Macedonia, and Albania<sup>57</sup> to report the horrors of the most horrific story of ethnic cleansing in modern times.

### **Libya:**

Libya achieved independence in 1951. In 1969 a military coup d'état ensured Colonel Muammar Qadhafi's power grab<sup>58</sup>. With plentiful oil and natural gas resources, Qadhafi has managed to maintain his regime while starving the Libyan public. Qadhafi was oppressive; the enforcement of censorship, for example, was so extreme to the point of imprisonment. With the rise of the Arab Spring, light has been shed upon the atrocities that have been occurring

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<sup>55</sup> Ibid 43

<sup>56</sup> Ibid 43

<sup>57</sup> Refugees flooded to neighboring Macedonia and Albania to avoid death at the hands of the Serbian forces

<sup>58</sup> CIA World Factbook: Libya, Introduction, <https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html>, Updated: August 16, 2011

throughout the Arab world for generations. Younger generations of Arabs from nations suffering injustice at the hands of their leaders rose up and made their voices heard, at all costs. Libya was no exception. Like many Arab countries, Libya is experiencing a youth bulge; over 60% of the population is between the ages 15-64<sup>59</sup>. The youth bulge across the Arab world, coupled with rising unemployment<sup>60</sup> and higher living costs, contributes to the youths' revolt.

Neighboring Tunisia had an outbreak of riots, protests, and outcries as the public suffered continued inflation in the cost of food, corruption, and high unemployment rates; with people barely being able to afford to feed their families in an oppressive regime, the anger was too great to be quelled. It was the beginning of the Arab Spring. The fury over autocratic regimes that were abusive towards their people spread throughout the Arab world. Libya and many states in the Arab world were inspired by Tunisia's example, and began to protest Qadhafi's regime. Tunisia successfully ousted their President Zine El Abidine Ben Ali in January 2011.

On March 17<sup>th</sup>, 2011 UN Resolution 1973 was passed. The resolution authorized the imposition of a no-fly zone and enacted Chapter VII of the UN charter to authorize a multi-lateral intervention by NATO into Libya, "Since March 24, an unprecedented coalition of NATO Allies and non-NATO contributors having been protecting civilians under threat of attack in Libya, enforcing an arms embargo and maintaining a no-fly zone. As NATO Secretary General Rasmussen explained, under "Operation Unified Protector," NATO is doing "nothing more, nothing less" than meeting its mandates under United Nations Security Council resolutions. No

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<sup>59</sup> CIA World Factbook: Libya, People, <https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html>, Updated: August 16, 2011

<sup>60</sup> Unemployment is estimated at 30% in Libya, CIA World Factbook: Libya, Economy, <https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html>, Updated: August 16, 2011

NATO ground troops have participated in the operation – NATO’s success to date has been achieved solely with air and sea assets”<sup>61</sup>.

There was criticism directed towards the United States for not being decisive enough, even though they eventually did take action by being one of the states leading the charge towards authorization of intervention into Libya. The US was careful not to appear as the ‘international policeman’, President Obama and his cabinet wanted an internationally approved coalition to take action. Consequently, the intervention would be perceived as a benevolent action that was based upon humanitarian considerations, and it would not be a US action but rather an action taken up by the NATO coalition. Qadhafi was using military force against his people, and a humanitarian crisis needed to be averted – but not by the global hegemon. The UNSC approval coupled with NATO’s willingness gave the mission more international legitimacy.

Libyan resistance forces created the National Transitional Council to ensure a more smooth transition. As NATO and Libyan forces began to take territory, the NTC took control over municipal actions and attempted to ensure the safety and control of the Libyan people, specifically supporting the resistance movement by meeting with international diplomatic personnel or securing Libya’s overseas resources. The NTC is assuming the governmental role during this intervention. On July 15<sup>th</sup>, 2011 the United States recognized the NTC as Libya’s “legitimate government”. Other countries have also formally recognized, and legitimized, the

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<sup>61</sup> NATO.int, “Nato and Libya”, Accessed: September 20<sup>th</sup>, 2011, <http://www.nato.int/cps/en/SID-B7CC2285-B2F8C8E0/natolive/71679.htm>

NTC; Britain, the African Union, France, and even China<sup>62</sup> have declared support for the NTC.

China was the last Permanent 5 member to recognize the NTC.

With the capture and killing of Qadhafi on October 20, 2011, the NTC seemed to officially become the one loud voice of the people. Although Libya is rife with tribal divisions, the NTC has become the internationally recognized representation of the Libyan people. What will become of Libya is unknown, but the humanitarian intervention most certainly ended a tyrannical dictator's rule in six months.

#### **Intervention Decisions:**

What these three case studies (Somalia, Kosovo and Libya) collectively conveyed is a potential for violent escalations. If interventions did not occur, there is evidence in all three cases that suggests that atrocities would have occurred – and continued to occur if coalitions did not intervene. In Somalia, the situation was so dire that there was not even a legitimate, formal government established. Warlords, clan leaders, and domestic terrorists had control over a country, which they starved to gain power. Kosovo was experiencing ethnic cleansing, and without intervention, a whole people – the Kosovar Albanians, were in danger. As for Libya, Qadhafi was using his military force and vast resources against his own people because they were protesting his corruption. In all three states, disappearances, torture, and corruption were commonplace. More alarming however, is that these regimes violently attacked their people. The intention for this thesis is not to examine the success or failure of multi-lateral humanitarian

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<sup>62</sup> Spegele, Brian, "China Recognizes Libya's NTC", Wall Street Journal, September 12, 2011

interventions, but to examine how a coalition of states decides to take action and intervene based on humanitarian grounds.

The following methodology section will begin to examine how states make the decision to intervene by cataloging recent cases of intervention with the aid of a historical table that will convey the decision making process, including the moral and political justifications and criticisms of interventions in Somalia, Kosovo and Libya.

## Chapter 4: Methodology

In order to establish an adaptive guideline that assists states in making the decision to intervene, one must look at the past for reference. This historical table (**Table 1**) will convey the process and historical framework of the decisions made by various parties to intervene in Somalia, Kosovo, and Libya. By examining the intervening forces' verbal communication and the language contained in the legislative framework, this Table summarizes justifications on which the interventions rested.

Understanding the decision-making and implementation processes of these interventions provides a greater in-depth analysis of the political and moral considerations made when states decided to intervene. The nature by which the interventions were decided upon and implemented enables an enhanced view of the three case studies. Exemplified in the framework below concerning the Somali intervention, the states' reasons for entering the country allowed for a rare unanimous vote. The severity of the hunger crises coupled with armed clan leaders was evident in the language used in legal documents and speeches, as Table 1 will show. A global consensus existed that this was unquestionably a 'humanitarian' intervention. Many scholars, specifically from the realist school of thought, do not subscribe of benevolent intervention, but when so many countries from multiple regions state purely humanitarian reasons for action, a universal consensus grows and becomes accepted. Somalia's people were starving, terrorism was rampant, and no stable government existed. It was a state only in name,

and the international community took collective action to alleviate the suffering of the Somali public.

This table also analyzes three case studies to gain historical context for the decisions that led to intervention. The exact language from the legislation and speeches are quoted in order to convey the thought process behind the international community and political leaders that made the decision to intervene. This thesis will use this table and historical insight to create an adaptive guideline whereby coalitions may consider a multitude of factors that can assist them in making the decision to intervene, or whether to take another course of action. Furthermore, decisions by international courts, international legal bodies, and international organizations<sup>63</sup> will be utilized to assess the decision making process taken in the three case studies

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<sup>63</sup> i.e. International Committee of Red Cross, an international organization that offers opinions on international laws and human rights

**Legal Documents' Justifications  
for Humanitarian Intervention**

UNSC Resolution 794, passed unanimously on December 3<sup>rd</sup>, 1992:

- “The magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security”
- “Expressing grave alarm at continuing reports of widespread violations of international humanitarian law occurring in Somalia, including reports of violence and threats of violence against personnel participating lawfully in impartial humanitarian relief activities; deliberate attacks on non-combatants, relief consignments and vehicles, and medical and relief facilities; and impeding the delivery of

Rambouillet ultimatum in February 1999; the United States and its European Allies told Milosevic’s forces that if they did not abandon their ethnic cleansing campaign in Kosovo, return autonomy to the Kosovo Albanians, and allow the entrance of peacekeepers into Kosovo, they would bomb Serbian forces. The Serbs did not even entertain the offer.

March 24<sup>rd</sup>, 1999 Secretary General of NATO, Javier Solana, and Supreme Allied Commander General Clark, ordered an air strike over the Federal Republic of Yugoslavia – without UNSC authorization

- The NATO air strike was called “Operation Allied Force”, but the United States called it “Operation Noble Anvil”
  - Air strikes started March 24<sup>th</sup>, 1999 and ended on June 11<sup>th</sup>, 1999
- NATO’s reasoning for intervening, Meeting held April 12, 1999:

UNSC Resolution 1973, passed March 17, 2011:

- “Condemning the gross and systematic violation of human rights, including arbitrary detentions, enforced disappearances, torture and summary executions”
- “Further condemning acts of violence and intimidation committed by the Libyan authorities against journalists, media professionals and associated personnel”
- “Considering that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity”
- “Expressing its determination to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of

<sup>64</sup> United Nations, Department of Public Information, Updated March 1997, Retrieved 11 October 2011

<sup>65</sup> NATO. “Historical Overview: NATO’s Role In Relation to The Conflict in Kosovo”. Updated 15 July 1999

<sup>66</sup> NATO. “Nato and Libya”. Updated 22 September 2011.

- food and medical supplies essential for the survival of the civilian population”

  - “Demand that all parties, movements and factions in Somalia immediately cease hostilities, maintain a cease-fire throughout the country, and cooperate with the Special Representative of the Secretary-General as well as with the military forces to be established pursuant to the authorization given in paragraph 10 below in order to promote the process of relief distribution, reconciliation and political settlement in Somalia”

- “Verifiable stop to all military action and the immediate ending of violence and repression”
- “Withdrawal from Kosovo of the military, police and paramilitary forces”
- “The unconditional and safe return of all refugees and displaced persons and unhindered access to them by humanitarian aid organizations”
- “The establishment of a political framework agreement for Kosovo on the basis of the Rambouillet Accords, in conformity with international law and the Charter of the United Nation”

- humanitarian personnel”

  - “call for the imposition of a no-fly zone on Libyan military aviation, and to establish safe areas in places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals”
  - “Deploing the continuing use of mercenaries by the Libyan authorities”

UNSC Resolution 1244, adopted June 10<sup>th</sup>, 1999:

- “Determined to resolve the grave humanitarian situation in Kosovo, Federal Republic of Yugoslavia, and to provide for the safe and free return of all refugees and displaced persons to their home”
- “Demands in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable”
- “Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required”
- “Ensuring the protection and freedom of movement of itself, the international civil presence, and other

- international organizations”  
Establishing a civil  
international presence

President Obama's Speech from East Room of White House, March 17, 2011:

President HW Bush's Speech from Oval Office, December 4, 1992:

President Clinton's Speech from the Oval Office, March 24<sup>th</sup>, 1999:

**Presidents' or Coalition Leaders' Justifications for Humanitarian Intervention [Declarations of Action / Speeches]**

- "1.5 million people could starve to death"; there is no access to food and in order to prevent tragedy, the US needs to step in
- "Anarchy prevails"; there is no stable government and the gangs have overtaken the street, troops need to provide security in order to ensure the safe delivery of food to starving Somalis – "Get the food through"
- "America will answer the call" to assist the suffering people of Somalia
- "They [US troops] will succeed" in aiding these people with the assistance of other nations' forces
- "We must give them hope", American action is often necessary given its global reach
- Create a secure environment and hand over the mission to the UN:
  - Open supply routes
  - Get the food moving
  - Prepare UN forces to keep it (food) moving
- Will not tolerate gangs or armed attacks, but emphasizes the mission is "humanitarian"
- Respect sovereignty and independence, goal is purely "to enable the starving to be fed"

- Protect people from inhuman treatment, execution, exodus
- Protect the vital interests of the US; proximity to Europe
- Did not want to see the region explode yet again and repeat the history of WW1 and WW2
- Wanted to regain autonomy for Kosovars so that they may be able to practice their culture and religions in peace
- Kosovars are willing to come to the table but the Serbians refuse to do so
- Serbia preparing major offensive against the Kosovars
- US & NATO has "Moral imperative" to end this tragedy

- Protesters met with brutality and violence; this is not acceptable
- Innocent civilians were killed, hospitals were attacked, and peaceful protests disavowed (paraphrase)
- "ALL attacks against civilians MUST stop"
- "Need to stop their campaign of repression, Qadhafi chose to ignore his people – and launched a military campaign against his people"
- "We will have no mercy and no pity" – quoting Qadhafi stating that current Libyan leadership would commit humanitarian atrocities
- Establish a no-fly zone
- "Focus is clear: protect"
- Stressed strong ties with Arab League and UN in denouncing Qadhafi; NATO coalition action, not US intervention
- States that Qadhafi has an opportunity to step down, if not, military action will take place
- "Potential for mass murder" if the situation is not addressed
- Reaffirms that US has no intention of determining the fate of Libya; it is in the hands of the Libyan people
- "The United States of America will not stand idly by in the face of actions that undermine global peace"
- "Our cause is just"

**Common Justifications between Leaders' Justifications and the Legal Documents' Justifications**

- Humanitarian obligation to assist the starving population in Somalia
- Grant starving people access to food
- Call for an end to the hostile, violent activities that endanger the Somali population
- Demanding an end to violence, war crimes, and human rights atrocities
- Regaining the autonomous position of Kosovo
- Removal of Serbian forces from the province
- Qadhafi's violence towards his people
- People have a right to protest peacefully
- Civilian attacks and vulnerability are unjustified and acceptable
- Potential for escalation

**States that opposed and supported the decision to intervene**

- Opposed: No states
- Supported: Unanimous decision by UNSC to intervene
- Opposed: Russia, China, and India
- Supported: France, UK, US, Slovenia, Argentina, Brazil, Bahrain, Malaysia, Gabon, Namibia, and NATO
- Opposed: (by abstention) Brazil, China, Germany, India, Russian Federation
- Supported: Bosnia and Herzegovina, Colombia, Lebanon, Portugal, South Africa, Gabon, France, US, UK, Qatar & NATO

**Parties that led the interventions**

- United Nations and various international forces including US, Australia, Italy, Canada, Botswana, Kuwait, Morocco, New Zealand, Nigeria, Norway, Pakistan, Saudi Arabia, Sweden, Tunisia, Turkey, United Arab Emirates, United Kingdom and Zimbabwe
- NATO forces led, coordinated, and carried out the Kosovo intervention without UNSC approval – or condemnation
- NATO forces in coalition with other armed forces including Qatar, Jordan, UAE, and Sweden

### Critics' Main Counter Arguments

- The images constantly streaming in the media of hungry children caused the intervention, not a complete analysis of the situation; interventions, if taken as a course of action, should have a chance of success – a better study of the situation would convey that was not possible at that time
- NATO Allies were motivated by the proximity to Western Europe
- Ignatieff suggests that the intervention in Kosovo was so that American forces could convey dominance over NATO
- The intervening forces came to the aid of fellow “whites”
- Sets a dangerous precedent, that UNSC authorization is not required, and circumventing it does not make one liable for penalties
- Too many civilian casualties occurred
- A significant amount of Europe’s oil is imported from Libya, therefore the economic interest serves as an encouraging factor to act
- Why intervene in the case of Libya and not other Arab countries suffering from similar brutal, autocratic regimes like Bahrain or Syria

## **Chapter 5: Guidelines**

The preceding section analyzed the decision-making and implementation processes of intervention in three recent cases of intervention. Relying on this information, and working from existing principles of humanitarian law and laws of armed conflict, this chapter seeks to introduce guidelines that may assist states when considering intervention. The codification of the decision making process can begin when guidelines are set.

The following section will highlight four suggested considerations for coalitions to factor in when contemplating humanitarian intervention as a course of action. These suggested guidelines are only a step towards the codification of the decision-making process, and need to be expanded in order to encompass the diversity of the situations that can warrant intervention. International law has sought to protect states and their sovereignty, but these guidelines will convey the support of international laws and precedents that uphold states' rights to intervene.

### **When the situation is classified as a non-international armed conflict:**

In the cases of Somalia and Libya, the situations that caused the angst that lead to international forces to intervene were internal. However, there is criterion set by international law that determines whether a case is truly considered to be a "non-international armed conflict" as defined by the Geneva Conventions. As history has demonstrated, whether and at what point a conflict is strictly internal is often difficult to pinpoint as one can observe in the analysis below.

According to Common Article 3 of the Geneva Convention, non-international armed conflicts are defined as conflicts that occurring within states. Generally, one party is the government, and the opposing party is nongovernmental in nature<sup>67</sup>. This definition is vague, but Common Article 3 does exclude riots and intermittent acts of violence from the scope of armed conflict<sup>68</sup>. A situation must meet two variables to meet the criteria as a non-international armed conflict<sup>69</sup>:

“A. First, the hostilities must reach a minimum level of intensity. This may be the case, for example, when the hostilities are of a collective character or when the government is obliged to use military force against the insurgents, instead of mere police forces

B. Second, non-governmental groups involved in the conflict must be considered as ‘parties to the conflict’, meaning that they possess organized armed forces. This means for example that their forces have to under a certain command structure and have the capacity to sustain military operations”<sup>70</sup>.

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<sup>67</sup> Vite, S. (2009), Typology of armed conflicts in international humanitarian law: legal concepts and actual situations, *International Review of the Red Cross*, 91(873): 69-95

<sup>68</sup> Chelimo, Gertrude C. (2011). Defining Armed Conflict in International Humanitarian Law. *Student Pulse*, 3.04. Retrieved from: <http://www.studentpulse.com/a?id=508>

<sup>69</sup> ICTY, The Prosecutor vs. Dusko Tadic, Judgement, IT-94-1-T, May 7, 1997, Paragraph 561-568 & ICTY, The Prosecutor vs. Fatmir Limaj, Judgement, IT-03-66-T, November 30, 2005, Paragraph 84

<sup>70</sup> ICRC, “How is the term “Armed Conflict” defined in international humanitarian law”, Opinion Paper, Geneva, March 2008

Although this allows us an opportunity to classify what is occurring in Libya as a non-international armed conflict, but does Kosovo fit this criterion since Yugoslavia was in the midst of dissolution? Should one consider Kosovo an autonomous state? After all, Kosovo only officially declared independence in 2008. Yugoslavia was fracturing, but not yet dissolved. Also, Somalia was and continues to suffer from clan violence and home-grown terrorism, but given that there is virtually no government in Somalia –can one say that Somalia meets the criteria for non-international conflict? In the Geneva Convention, Common Article 3 assumes that one of the parties involved in the conflict is the government. However, one must note that although the Geneva Conventions apply to contracting parties, the conventions have reached such a level of universality that they are considered customary law<sup>71</sup>.

The adoption of a narrower definition of non-international conflicts to incite Additional Protocol II of the Geneva Conventions<sup>72</sup> allowed for greater clarity in terms of determining the status of a conflict. Protocol II<sup>73</sup> applies to conflicts “which take place in the territory of a 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”. This definition incites two new factors: that the opposition group must have control over territory, and the conflict must be between government forces vs. non-governmental forces, not between two non-governmental forces. This restriction does not disqualify Article 3’s

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<sup>71</sup> Solis, Gary, “The Law of Armed Conflict; International Humanitarian Law in War”, Cambridge University Press 2010, p. 82-83

<sup>72</sup> ICRC, “How is the term “Armed Conflict” defined in international humanitarian law”, Opinion Paper, Geneva, March 2008

<sup>73</sup> Protocol II emphasizes the need to protect victims of non-international conflict

definition, but rather narrows the scope whereby Protocol II may be utilized. This applies in the case of Libya.

The International Committee of the Red Cross suggests a more rounded definition of non-international conflict to encompass most non-international conflicts,

“Non-international armed conflicts are *protracted armed confrontations* occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State [party to the Geneva Conventions]. The armed confrontation must reach *a minimum level of intensity* and the parties involved in the conflict must show *a minimum of organization*”.

The ICRC definition grants a lawmaker or government official more room to make a decision concerning proceeding with a humanitarian intervention in the case of a non-international conflict that threatens the civilian population.

Within the body of Protocol II, the text is very clear that the use of Protocol II cannot be used as grounds for justification of interventions:

“Art 3. Non-intervention:

1. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

2. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.”

Humanitarian intervention cannot use an incident where a state meets the criteria for Protocol II as a reason or justification for the infringement of sovereignty, even when the application of the protocol makes evident that armed conflict is occurring, and the public is in danger. There is no such limitation however, in Article 3. Therefore, one may draw on Article 3 as justification for humanitarian intervention. However, it is imperative to note that states could be more likely to take action if a governmental authority is being abusive since governments are usually well armed and have control over territory and military forces.

These complexities make it difficult to navigate international humanitarian law, but a line must be drawn. Therefore, for the sake of this study, Libya, Somalia, and Kosovo will all be considered as non-international armed conflicts whereby international forces took action to stop internal strife. Libya because Qadhafi used his military against internal rebel forces, Somalia because the

clan warfare, strife, and terrorism was home grown, and Kosovo because it did not formally announce independence till 2008.

Libya's National Transitional Council is armed and resisting the Libyan loyalists and Qadhafi forces. Armed clan leaders and terrorists threatened Somalia, and Kosovo's KLA was armed and fighting Serbian forces. Therefore, this analysis finds this internal armed conflict as a credible justification for intervention.

Furthermore, this guideline strives for intervention with regards to non-international armed conflicts because there are many more treaties and international laws that address international armed conflicts,

“This wealth of treaty law [international armed conflicts] does not regulate a large proportion of today's armed conflicts in sufficient detail. The primary reason for this is that the majority of current armed conflicts are non-international, which are subject to far fewer treaty rules than international conflicts, although their number is increasing. In fact, only a limited number of treaties apply to non-international armed conflicts, namely the Convention on Certain Conventional Weapons, as amended, the Statute of the International Criminal Court, the Ottawa Convention banning anti-personnel landmines, the Chemical Weapons Convention, the Hague Convention for the Protection of Cultural Property and its Second Protocol”<sup>74</sup>.

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<sup>74</sup> ICRC, “Customary IHL”, Introduction Section, Retrieved November 2, 2011, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_in\\_Puofthst](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_in_Puofthst)

Non-international conflicts are more likely to occur as stated above by the ICRC, and given that there are much fewer laws applicable in non-international conflicts, this guideline seeks to address that gap in international legislation.

**When the threshold for mass casualties and injuries is imminent:**

There are often warning signs of an attack. Whether it is a factional organization or a government, a violent uprising or crackdown can be foreseen.

One of the justifications used for the Libyan intervention was Qadhafi's use of the military against his people. The shocking nature by which he attacked his people left statesmen and political leaders clamoring for action. The unmerciful use of force conveyed the danger posed to the people of Libya. Qadhafi's son Saif Al-Islam even equated the Libyan protestors to rats<sup>75</sup>; a warning sign of possible genocide. Gregory Stanton of Genocide Watch names Step 3 of 8 towards possible genocide is "Dehumanization"<sup>76</sup>. In Kosovo, ethnic cleansing was already occurring, and was going to continue unless foreign forces intervened. As stated in the country profile, Kosovo was too historically significant to succeed. Serbian forces were determined to regain control. Without intervention, ethnic cleansing and reverse ethnic cleansing would have continued.

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<sup>75</sup> BBC News, "Libya Unrest: UK Plans to Charter Planes for Britons", 22 February 2011

<sup>76</sup> Chart developed by Gregory Stanton, president of Genocide Watch, & presented to U.S. State Department in 1996, suggesting that genocide develops in the above eight "predictable but not inexorable" stages

### **When there is evidence of war crimes and crimes against humanity:**

Existing international law conveys that war crimes and crimes against humanity can occur in non-international conflicts. Legally defining violent uprisings or crackdowns as war crimes and crimes against humanity allows for greater repercussions<sup>77</sup>, and it allows the involvement of the international community.

“The Rome Statute of the ICC adds force to the view that there are war crimes and grave breaches in non-international armed conflicts. The statute, in Article 8, War Crimes subparagraphs 8.2 (c) and (e), specifies sixteen ‘serious violations’ all but one of them war crimes or grave breaches that may occur in common Article 3 armed conflicts – in non-international armed conflicts.”<sup>78</sup>

This thesis argues that where war crimes and crimes against humanity are occurring, international society must consider intervention. Although this guideline seeks only to serve as an aid in making the decision to intervene, it does also convey what is at risk should a coalition choose not to intervene. Syria is in disrepair and rife with violence, and yet the international community has chosen not to act<sup>79</sup>. The government of Bahrain has expelled, imprisoned, and tortured protesters<sup>80</sup>, but the international community has chosen not to act. The ‘duty’ to intervene is not yet a legal mandate, therefore when coalitions choose not to act, there are no

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<sup>77</sup> I.e. Leaders can be tried in international courts in The Hague

<sup>78</sup> Solis, Gary. “The Law of Armed Conflict; International Humanitarian Law in War”, Cambridge University Press 2010, p. 100-101

<sup>79</sup> Hamid, Shadi. “Will Syrians Seek Outside Help?” The New York Times, 21 October 2011

<sup>80</sup> Shadid, Anthony. “In Rubble-Strawn Sitra, Faces of the Young Foretell a Grim Future for Bahrain”. The New York Times, 26 October 2011

legal ramifications. Only moral questions remain, and those are questions states may choose to ignore or struggle with in cases of inaction<sup>81</sup>.

Crimes against humanity are defined as criminal acts of war perpetrated against civilians in a conflict<sup>82</sup>. The crackdown that ensued in both countries has occurred against the general population, and they have been attacked by their countries' military. The same occurred in Libya, although the crackdowns varied in intensity and violence, the cases in Bahrain, Syria, and Libya can all be classified as states where crimes against humanity occurred.

Furthermore, the use of force in the case of Libya by Qadhafi may be classified as a crime of aggression, when the Rome Statute was reviewed in 2010, the 'crime of aggression' was added;

“The “crime of aggression”<sup>83</sup> is committed by leaders who plan or execute an act of aggression that constitutes “by its character, gravity and scale” a “manifest violation of the Charter of the United Nations”<sup>84</sup>”.

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<sup>81</sup> President Clinton, after the completion of his term has repeatedly apologized for not taking action in the case of the Rwanda genocide

<sup>82</sup> Solis, Gary. “The Law of Armed Conflict; International Humanitarian Law in War”, Cambridge University Press 2010

<sup>83</sup> Scheffer, David “States Approve New Crimes for International Criminal Court” ASIL Insight, June 22, 2010, Volume 14, Issue 16

<sup>84</sup> *Id.* Annex 1, art. 8 *bis* (1); Review Conference of the Rome Statute of the International Criminal Court (ICC)

War crimes are defined as acts of war that are committed, which violate international laws<sup>85</sup>. In Kosovo, the Serbian forces violated rules of proportionality and military necessity, as well as carried out mass killings with forethought and conviction. The latter all violate international law<sup>86</sup>.

“In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) **Killing members of the group;**
- (b) **Causing serious bodily or mental harm to members of the group;**
- (c) **Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;**
- (d) **Imposing measures intended to prevent births within the group;**
- (e) **Forcibly transferring children of the group to another group.”<sup>87</sup>**

The Albanian Kosovars faced mass executions, and there was an attempt by the Serbian forces to exterminate the Albanian-Kosovar population. The situation in Kosovo should be referred to as genocide, not ethnic cleansing. Ethnic cleansing does not explain the gravity of the crimes that ensued in the former Yugoslavia. Genocide is a crime against humanity, and it should be recognized as such in the case of Kosovo. However, since the conflict was not classified as genocide at the time, the mass killings were enough to warrant as crimes against humanity and war crimes. Coalitions need to consider these factors when considering intervention. It is

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<sup>85</sup> Ibid 82

<sup>86</sup> Ethnic cleansing is a term that was used in order to avoid the obligation of action in the case of genocide, which is what ethnic cleansing surmounts to

<sup>87</sup> United Nations. “Convention on The Prevention and Punishment of the Crime of Genocide”. Resolution 260 adopted 9 December 1948

imperative to note that the ICJ did not classify the atrocities in the former Yugoslavia as genocide, but the Yugoslav tribunal did.

**When there is a credible threat to neighboring states:**

When a non-international armed conflict escalates, it threatens the people of that respective country, but it also threatens the security and stability of neighboring states, and its respective region<sup>88</sup>. Refugee crises are almost guaranteed to occur when a state is in turmoil, such as the mass exodus of people leaving Rwanda and flooding into neighboring Congo, Burundi, Uganda, and Tanzania<sup>89</sup>. This threat to neighboring states may be declared as a threat to international peace, and therefore a justified reason for intervention<sup>90</sup>.

Refugee camps and settlements generally are in poor condition, imposing a serious burden upon the host state. Refugees are not all victims of atrocities, some are the culprits masking among refugees. Rwandan refugee camps in the Congo faced a multitude of attacks because some of the Hutu perpetrators were continuing to murder Tutsis<sup>91</sup>. Host states are faced with a humanitarian crisis that may lead to their own instability. In Kosovo, the Roma population refugee camp was so dismal, it was found to be contaminated with lead<sup>92</sup>. In South Sudan, there has been a mass exodus from Sudan,

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<sup>88</sup> Vinci, Anthony. *Armed Groups and Balance of Power: The International Relations of Terrorists, Warlords and Insurgents*. Taylor and Francis Publishing, 2009. Pages 55-56.

<sup>89</sup> Human Rights Watch, "Tanzania/Uganda: Prevent Forced Return of Refugees", June 19, 2009

<sup>90</sup> Murphy, Sean. *Humanitarian Intervention: The United Nations in an Evolving World Order*. University of Pennsylvania Press, 1996. Page 285.

<sup>91</sup> Rieff, David. *A Bed for the Night: Humanitarianism in Crisis*. New York: Simon and Schuster, 2003

<sup>92</sup> Human Rights Watch, "Lead-Contaminated Roma Camps in Kosovo Shut Down", December 9, 2010

“Over the past two weeks thousands of refugees have crossed the border from Sudan into the newly independent South Sudan. This past Monday, November 28, Doctors Without Borders/Médecins Sans Frontières (MSF) started an emergency medical intervention in the village of Doro, some 40 kilometers [24 miles] from the border where the refugees have fled fighting in Sudan’s Blue Nile State. An estimated 13,000 men, women and children have already arrived and the MSF team has seen thousands more walking with what possessions they can carry from the border area towards the gathering-point at Doro.<sup>93</sup>”

Coalitions need to consider the consequences of inaction. If states do not form coalitions and act when a country is in turmoil, neighboring countries may bear the burden of a mass exodus of refugees who have few resources and will rely heavily upon their host state, which may or not be able or willing to take care of refugees. If a host state cannot withstand the refugee crises they had no part in creating, then the whole region may suffer. There are humanitarian and economic factors to consider from safety to public health to food and sanitary provisions; states must examine all possible consequences when making a decision.

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<sup>93</sup> Doctors Without Borders. “South Sudan: Refugees Flooding in From Blue Nile State”. 1 Dec 2011.

## Chapter 6: Conclusion and Limitations

This thesis has sought to examine multilateral humanitarian intervention as a universal norm of international law and to analyze the decision-making process of humanitarian intervention; including the political and moral reasons, justifications, procedures, and criticisms for the interventions in Somalia, Kosovo and Libya to determine the existence of guiding commonalities. In addition, it has proposed model guidelines based on existing and emerging legal principles applicable in situations requiring humanitarian intervention.

While attempting to fulfill the purposes of this thesis, limitations and multiple conclusions became apparent. The coming paragraphs will discuss the latter, followed by concluding remarks.

### **Humanitarian intervention has been determined as a *right of states* but not an *obligation*:**

Scholars like Nicholas Wheeler and Jane Stromseth argue that humanitarian intervention will eventually be accepted as an international legal norm. Norms result from continuing and accepted state practices. Should a future humanitarian intervention prove to be a catastrophic failure, its acceptance as a norm could be hindered thus derailing the current, more positive, outlook towards humanitarian intervention. This conveys the fragility of humanitarian intervention, but more importantly, the debates about the implications of humanitarian intervention remain contested. While Wheeler and Stromseth imply obligation of intervention,

Buchanan continues to assert that it is *only* a right, not an obligation of states to take part in an intervention.

**The concept of humanitarian intervention remains contested:**

Humanitarian intervention is controversial. Depending upon the circumstances and perceptions concerning interventions vary, as an infringement on sovereignty, imperialistic, a return to colonization - or as valiant and heroic. Realist scholars dispute the entire validity of the concept – arguing that states will not intervene unless in self-interest; that true *international benevolent action* is non-existent. Perhaps they would accept that proportionality is a more appropriate outlook towards intervention whereby states appreciate their self-interest, but recognize that international security and peace are imperative to their respective states.

Humanitarian intervention may appear to be an idealistic measure due to its moral undertones and complexity, but it maintains as a course of action that benefits many parties and states.

Although the cost for intervention is great, the benefits are also great. Ethnic cleansing and reverse ethnic cleansing were stopped by the NATO intervention in Kosovo, and starving people gained access food due to the Somali intervention. Every time a nation becomes more secure, it benefits the global community and the global economy.

**International law has not been able to keep up with the changes in international society and relations:**

Achieving international consensus on humanitarian intervention is possibly one of the most critically needed developments in international law. With globalization, decreasing energy and water supplies, and climate change heighten the possibility of mass refugees, disasters, and internal and trans-border conflicts, a clear consensus on when the international community must intervene is vitally necessary.

An accepted principle on intervention, however, directly counteracts five hundred years of international law development designed to protect state sovereignty and rights.

Combined with decades of state actions devoted to colonization, Cold War engagements, and exploitation of other states' resources, have virtually ensured individual and collective mistrusts of such a principle.

International law has quite a long way to go to catch up with this ever-evolving world. Increased interdependence and globalization has led to a more connected world, which has led to more international legal legislation. International trade laws, maritime laws, and human rights laws have become more significant in a shrinking world. However, given the evolving nature of global society and technology, the need for international law is growing. That fulfillment of that need can be satisfied with new international legislation but the process has not kept up with the demand. International law will be altered, amended, and created but it is a long, arduous process. This extensive, long process is why so many critics are vocal about international law.

### **Public influence cannot be accurately measured:**

There is another factor that has great influence over a decision to intervene - the public. The public of a powerful or hegemonic state have the ability to influence their leaders to take action, and at times, they are the force that catalyzes the course of action,

"Lieutenant General Wesley Clark looked to the White House for leadership. 'The Pentagon is always going to be the last to want to intervene,' he says. 'It is up to the civilians to tell us they want to do something and we'll figure out how to do it.' But with no powerful personalities or high-ranking officials arguing forcefully for meaningful action, midlevel Pentagon officials held sway, vetoing or stalling on hesitant proposals put forward by midlevel State Department and NSC officials"<sup>94</sup>.

Although the level of influence a public has over its government cannot be accurately measured<sup>95</sup> - the public's influence is irrefutable. The intervention in Somalia was largely based on the public's outrage over footage of starving women and children in the state in the horn of Africa - images that had a major impact of the consciousness of the American people – until the appearance of dead U.S. soldiers. If state governments refuse to intervene, or the public refuses to grant governments the support to intervene, humanitarian intervention will be limited.

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<sup>94</sup> Power, Samantha. "A Problem From Hell: America and The Age of Genocide". Harper Perennial Publishing; 3rd edition, 6 May 2003; P.337

<sup>95</sup> Although surveys and polls have attempted to convey this information, these studies are limited in ability and scope

**The “Possibility of Success” undercuts the concept of humanitarian intervention:**

Principles of intervention and scholars, such as Wheeler, agree that intervention is illegal unless the prospect of success exists. The purpose of this requirement is important - to ensure that states do not worsen a situation, or take the intervention decision lightly. This concept, although generally accepted among the scholarship of intervention, undercuts intervention. When an intervention is deemed “humanitarian” then the considerations should be based on the human condition; suffering, forcible movement or number of civilian casualties – these should be the main considerations.

This requirement should not undermine the need to ensure that sufficient political will and resources are put forth to ensure that humanitarian needs are met.

Success is always possible; it is a matter of resources and commitment. Interventions should be carefully examined before being enacted. The initial consideration of success is unfair to the international community. A situation must be examined and studied, once it is determined how many resources it would call upon, then a coalition may make a decision to act or find alternate methods to influence the situation.

It is unfair to ask a coalition of states to commit to an action that they cannot sustain, but it is also unjust to cast aside a crisis without truly examining the situation. Many critics of the intervention in Somalia state that it was an action that could have never succeeded, and yet the

international community took action anyway. The possibility of success needs consideration and reflection, but it needs extensive examination and no assumptions.

### **Concluding Remarks:**

Humanitarian Intervention has and will continue to face obstacles. It is controversial when applied and controversial when it is not applied. Interventions in Somalia, Kosovo, and Libya all have their critics, but so does the inaction in Rwanda. This conveys the ongoing debate amongst scholars, and the public, concerning humanitarian intervention.

In addition, there are countless questions raised in the specific implementation and authorization of humanitarian intervention. The UNSC did not approve the intervention in Kosovo, and scholars like Burton raise the question about whether the UNSC should even have that authority.

Many questions remained unanswered, but that is partly due to this concept being so relatively young in comparison to other international laws or concepts, some of which have existed for five hundred years. This thesis has sought to answer some of those questions, and propose a step forward with the guidelines in Chapter 5, but these suggestions are only an initial step towards clarifying the process of humanitarian intervention. Scholars often taught *just cause* when discussing an intervention action. Just cause is too vague of a term when discussing factors that will lead to an intervention. In order to create a more transparent process, specific guidelines like the ones included in Chapter 5 must be created and consistently followed.

In order for the discussion concerning intervention to move forward, the codification process must progress and application must become more consistent. This thesis holds the view that intervention is becoming more acceptable and is emerging as a norm in international law, as evident from historical precedent and scholarly analysis, but intervention has yet to receive universal approval. If the international community is going to commit to universal intervention ideals and processes, their actions, decisions, and authorizations must be consistent.

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