

Humanitarian Intervention Revisited

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Introduction

Humanitarian Intervention has of late become the *bête noire* of the international law system. Scholars have been polarised into the 'pro-humanitarian intervention Charter sceptics' and the 'anti-humanitarian intervention Charter huggers'. There has also been a recent plethora of tests designed to ensure accountability and restraint in the resort to intervention as an *ersatz* to the Charter. None of this has led to any resolution of the issue or produced a likely solution.

Within all this discord there is one central feature: an agreement that there are times when intervention is necessary - examples of such intervention can be found throughout legal history. Here I propose to once again look over the development of intervention over the past hundred years what humanitarian intervention actually is as opposed to what it was and also look at the possibilities of what the impact of the current proposals before the UN might be on humanitarian intervention; will they result in more of the same, or is there in these proposals a solution to the legal vacuum between what States are actually doing and what the Charter permits.

In order to give an honest appraisal of how the law stands and how it has developed and to present a realistic overview of humanitarian intervention, various examples will be laid out to illustrate the ever-changing nature of intervention. To do this accurately, the Charter of the United Nations with its method of operating, as well as the concomitant developments of customary international law must be taken into account.¹

Altruism is far from always being the *bona fide* rationale for intervention. Some critics maintain it only ever occurs when a lowest common denominator has been reached, 'It seems that humanitarian intervention is a restricted notion, called upon in situations where it is relatively cheap, is against a militarily weak nation, operates in a location that is accessible and strategically important, where public opinion is in favour and the intervention does not interfere with other political and economic objectives'.² This is not, however, necessarily a reason for bringing intervention into ill repute. If the results are the same, do the motives or the lack of real commitment to the doctrine as a whole really matter? Humanitarian law as it stands must be examined without prejudice to the somewhat questionable political manoeuvrings which accompany it and which are beyond the realm of this examination. There are several more objections to intervention including the possibility of vigilantism, though this, if anything, argues for an entirely new approach which it is hoped the UN reforms may achieve. It is also seen as Neo-Imperialism, as most

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¹ Customary international law has changed the Charter's interpretation in several areas, such as abstentions in voting in the Security Council and the use of the 'Beijing formula' by the Secretary General. It could therefore be reasonable argued that it may also change how Chapter VII operates.

² Chinkin, 'The State that Acts Alone: Bully, Good Samaritan or Iconoclast', [2000] 11 *European Journal of International Law*, 36, 37.

examples given show the Western countries once again sending troops into former colonies. This is not necessarily always the case as the instances given below of the Indian and Vietnamese interventions exemplify. From a legal point of view, probably the most condemning reasoning against intervention is the legitimisation of actions outside the Charter and the breakdown of the rule of law. All of these matters point to the urgent need for some form of consensus on how to deal with humanitarian crises in the future.

I. The Pre- Charter Era

Some commentators dismiss as foolhardy looking to pre Charter examples of intervention to gain insight into customary international law. Dinstein states that, 'knights if humanity are out of time and out of place in the contemporary world'.³ That may be the case, however the International Court of Justice acknowledged in the Nicaragua Case⁴ that customary international law on the use of force survived the Charter, though it should be noted that it contemporaneously discounted the use of force to protect human rights. It is thus valid to have regard to the pre-charter era for guidance on how customary international law stood when the charter was adopted and how it stands today.

Humanitarian Intervention, in this epoch, suggests widespread acceptance of the doctrine. Commentators such as Brownlie suggest that there are very few examples of true humanitarian intervention in the 19th century, except the French occupation of Syria from 1860 to 1861.⁵ This could also be argued for the present era. However, similar to other doctrines of international law, such as the law of self-defence, where there are also few true examples, this does not mean that the doctrine, in and of itself, does not have widespread acceptance.

Grotius understood, in 1625, that a just war could be waged to protect both one's own nationals and the nationals of other states;⁶ and between 1827 and 1908 there were numerous interventions, justified on humanitarian grounds. In the early 20th century, the doctrine was recognised, 'by a vast majority of legal scholars as part of customary international law'.⁷ The Kellogg-Briand Pact of 1928 outlawed the use of force as an instrument of policy with regard to relations between countries - whether this includes intervention on humanitarian grounds, when it is in its purely altruistic form and thus not an instrument of policy is questionable. Whether the doctrine survived the Charter is debatable, as Chapter VII of the latter establishes firm rules on all uses of force.

³ Dinstein, *War, Aggression and Self-Defence* (3rd ed, Cambridge University Press, 2001), 66.

⁴ Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Merits) (1996) International Court of Justice 14.

⁵ Brownlie, Ian, *International Law and the Use of Force* (Oxford University Press, 1963).

⁶ Damrosch and Sceffer, *Law and the Use of Force in the New International Order* (Westview Press, London, 1991); Karashkin: Human Rights and Humanitarian Intervention 203

⁷ Danish Institute of International Affairs, *Humanitarian Intervention, Legal and Political Aspects* (1999), 79.

II. Adoption of the Charter to the end of the Cold War

Wedgwood argues that the UN charter is a, 'document of its time'⁸ which in many ways is correct - it envisages the possibility of World War III and not the process of decolonisation which would lead to ethnic and civil conflicts in many parts of the world. A world with mass communication means that, as in Rwanda, Kosovo or Sudan, it is now possible to observe massacres as they happen.

Article 2 (4) of the Charter⁹ refers to 'territorial integrity' and 'political independence' or any other use of force 'in a manner inconsistent with the purposes of the United Nations.' In relation to humanitarian intervention, the territory of a country is invaded and a government may be overthrown – as consequence the political independence and territorial integrity of a country are lost, even if only for a short period.¹⁰ This explains the motive behind countries' invoking self-defence when humanitarian intervention is embarked upon; it is the Charter's sole allowance outside the UN framework, whether unilaterally or multilaterally, for breach of Article 2(4). Continuing in this vain infinitely brings the whole notion of self-defence into disrepute and hastens the demoralisation of international law that finally it could be argued humanitarian intervention outside the UN umbrella does so effectively.

The Charter does not specifically rule out humanitarian intervention. If the Security Council deem something as a threat to 'international peace and security',¹¹ there is always a possibility of the UN sanctioning an action. In this vain, whether an entirely internal crisis is actually a threat to international peace and security is questionable, though strict interpretation of the Charter does not aid in justifying intervention in those situations where there is a shock to the conscience of humanity. Humanitarian action has remained outside the loop of the United Nations' sanctioned actions more often than not.

A prime example of humanitarian intervention is the Indian invasion of East Pakistan in 1971. Though India's long-term hostility towards Pakistan was an unspoken consideration in this intervention and the perennial favourite, self-defence was the ultimate justification given for the Indian action, it started from humanitarian reasoning and it resulted in a humanitarian exercise.

The Indian government's backtracking, from its original humanitarian justification, is not advantageous, though understandable at the time, as any other legal justification would not have been acceptable. The international community accepted the intervention rather easily and Bangladesh became the 138th member of the United Nations in 1974. So while India acknowledged self-defence, the reality was otherwise.

⁸ Wedgwood, 'Unilateral Action in the United Nations System' [2000] 11 *European Journal of International Law*, 349, 349.

⁹ Article 2 (4) 'All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of a state, or in any other manner inconsistent with the purpose of the United Nations.'

¹⁰ Though other forms of humanitarian intervention such as sanctions are not included in this discussion, there is more of a possibility of unilateral or multilateral action outside the UN on a more substantial legal basis here.

¹¹ Article 39, Chapter VII of the Charter of the United Nations.

In Cambodia in 1978, where scenes of some of the most atrocious carnages of the 20th century occurred, Vietnam claimed self-defence as the justification for intervention, but unlike Bangladesh, the intervention was marred by Cold War politics and consequently condemned by the General Assembly¹² as a breach of the Charter. It also came under massive condemnation from a large part of the world community, yet the massive human rights violations committed by the Khmer Rouge had to come to an end. History has been kind to the operation, as the international community has accepted Vietnam's actions as justified under the circumstances, but occupation did not end until the 1990s.

The Tanzanian intervention in Uganda in 1979 is another familiar example of humanitarian intervention in the Cold War period. Again the action was justified on self-defence grounds, and, similar to the Indian operation in 1971, it was not condemned by the General Assembly or the Security Council. This constant use of self-defence begs the question of whether humanitarian intervention could be interpreted as an arm of the law of self-defence. This is unlikely as it is usually only false piety to some kind of legal justification that causes it to be invoked. Also it might unnecessarily hamper humanitarian intervention should it become legitimised as an arm of self-defence, as there would be more pressure to actually prove self-defence. This may leave circumstances where intervention is required and where those countries immediately affected are unable or unwilling to intervene without a champion.

In 1979 France intervened in Central Africa to put an end to the atrocities committed there by the regime of President Bokassa and reinstated President Dacko, similar to the situation in Bangladesh and Uganda. Only a few states criticised the French action, the international community appreciated the results and neglected the legal justifications that were given.

The United Kingdom, which argued at the time of the Vietnamese invasion that human rights could not justify the use of force,¹³ has softened its position since the end of the 1980s. The development of the new stance of the UK government may be observed in the Foreign and Commonwealth Office Paper, 'Is Intervention ever justified'. It begins by outlining the general prohibition of all kinds of intervention, followed by delineating the possible exceptions, with the last example classifying humanitarian intervention. It asserts that, 'in fact – the best case that can be made in support of humanitarian intervention is that it cannot be said to unambiguously illegal'¹⁴ and came to the conclusion that its doubtful benefits would be heavily outweighed by its costs in terms of respect for international law.¹⁵ These statements by the then British Foreign Secretary Douglas Hurd would, just six years later, be turned on their heads; this will be outlined further below.

¹² General Assembly Resolution 34/22, 4th November 1979, The situation in Kampuchea.

¹³ Christine Gray, *International Law and the Use of Force* (1st Ed, Oxford University Press, 2000), 27.

¹⁴ Foreign and Commonwealth Office Paper, *Is intervention ever justified*, (Foreign Policy Document No.148, 1986) British Yearbook of International Law 619.

¹⁵ *Ibid*, 619.

III. The Present Era

This era, which, according to President George Bush, was supposed to see the advent of the New World Order, when the Security Council would finally get on with the work it was intended to do. However, as Wedgewood as said, 'the UN Charter did not work as intended from the beginning, nor for most of its juridical career.'¹⁶

The Security Council has had some real successes; the initial Gulf War in 1991 and the Haiti Operation. However, the unanimity that was impossible during the Cold War has been as difficult to achieve today, leaving some crises without aid and so unilateral and multilateral humanitarian intervention independent of the UN has continued.

1. Interventions

The first major humanitarian action since the end of the Cold War was the American, French and British action in Iraq after the Persian Gulf War of 1990-1991. Resolution 688 called on Iraq to halt the operations taken against the Kurds in the north of Iraq¹⁷ it also expressly referred to Article 2 (7). None of the powers at the time claimed humanitarian interventions as the legal justification for their actions; though later the United Kingdom did openly use humanitarian reasons as justification it has also identified guidelines for when and how humanitarian action may be taken.¹⁸ This is an interesting development of the doctrine especially since it comes from one of the five permanent members of the Security Council.

Similar to the Indian and Ugandan exploits of another era, the action was not condemned by the Security Council or the General Assembly though the fact that those undertaking the action would have vetoed any such attempt in the Security Council should not be underestimated. The actions continued in the no-fly zones for nearly a decade. Finally in 1999, Russia and China condemned the escalation in the bombing of Iraq and the intervention, after an increase of hostilities by the American and British forces. Resolution 688¹⁹ did not envisage military action and yet it was the justification given by the parties involved.²⁰

The Kosovo intervention is another example of unilateral operation, which is floundering in a grey area between UN authorisation and entirely unilateral actions. In Kosovo, the UN itself came very close to taking action; it was the Russian veto that prevented intervention, as opposed to disagreement on the humanitarian catastrophe unfolding. The NATO operation in 1999 led to the withdrawal of the Yugoslav troops and the current UN installation in Kosovo, KFOR.

¹⁶ Wedgewood, 'Unilateral Action in the United Nations System', [2000] 11 *European Journal of International Law*, 349, 350.

¹⁷ Security Council Resolution 688 : Iraq 5th April 1991.

¹⁸ Gray, Christine, *International Law and the Use of Force*, (1st Ed, Oxford University Press, 2000), 27.

¹⁹ Security Council Resolution 688 : Iraq 5th April 1991.

²⁰ This tactic of using a Security Council resolution which in itself does not envisage military action is becoming a more prevalent justification outside the realm of humanitarian intervention, particularly since the invasion of Iraq in 2003.

Resolution 1244 taken under Chapter VII, after the NATO operation was completed, authorised member states to establish and maintain international peace and security in Kosovo, this included major NATO involvement.²¹ The content of the resolution was a compromise between Russia and China and NATO, so to not expressly authorise the use of force that has occurred. Gray has argued that, 'resolution 1244 was not a retrospective acceptance of the legality of NATO action'.²²

Various NATO states invoked multiple reasons from implied authorisation to humanitarian intervention as justification for their actions, among them implied authorisation under resolution 1160,²³ 1199²⁴ and 1203.²⁵ This justification is questionable, as these resolutions definitely do not expressly authorise the use of force and it obviously was not intended to mean authorisation by at least one of the members of the Security Council. That is pertinent, as regards to humanitarian intervention, as NATO represents a wide cross section of European states as well as the United States; this gives the action slightly more legitimacy than it would have otherwise had.

Resolution 1244 is evidence of the general agreement on the achievements of the intervention, though it was outside of the UN mandate. Kofi Annan stated, 'It is indeed tragic that diplomacy has failed, but there are times when the use of forces may be legitimate in the pursuit of peace. But... under the charter the Security Council has primary responsibility for maintaining international peace and security...therefore the council should be involved in any decision to resort to the use of force'.²⁶

So, again the Security Council is said to have primacy over humanitarian intervention, though the Secretary General does seem to be admitting that the Kosovo operation had some level of authority. As Wedgewood argued, 'when push comes to shove, waiting for unanimity may sometimes fail to protect other values at stake'.²⁷ It maybe implied from this that there are a hierarchy of values in international relations that trump each other in times when they conflict. So would Sovereignty trump massive human rights violations even those which violate *jus cogens* norms such as genocide? Or the other way round? This is beyond the scope of this short study, but should be considered.

Following the NATO operation in Kosovo, Yugoslavia brought an action against the ten of the nineteen members of NATO before the ICJ, arguing, among others, that there is no right of humanitarian intervention. All the defendants, save Belgium, did not go into the merits of the case. Belgium argued implied authorisation, as well as the necessity of intervention to protect human rights. The Court has yet to pronounce on the merits of the case only stating in all cases, 'that all parties appearing before it must act in conformity

²¹ Security Council Resolution 1244 (1999) on the situation relating Kosovo.

²² Gray, Christine, *International Law and the Use of Force*, (1st Ed, Oxford University Press, 2000).

²³ Security Council Resolution 1160 (1998) on the letters from the United Kingdom (S/1998/223) and the United States (S/1998/272).

²⁴ Security Council Resolution 1199 (1998) on the situation in Kosovo (FRY).

²⁵ Security Council Resolution 1203 (1998) on the situation in Kosovo.

²⁶ Press Release SG/SM/6938 of 24th March 1999.

²⁷ Wedgewood, 'Unilateral Action in the United Nations System' [2000] 11 EJIL, 349, 353.

with their obligation under the UN Charter and other rules of international law, including humanitarian law.²⁸

The ECOWAS operation in Liberia in 1990 is another example of a regional organisation taking upon itself to intervene outside the ambit of the Security Council. ECOWAS went into Liberia to attempt to end the civil war that was escalating there and the humanitarian crises unfolding. The Security Council in Resolution 788 subsequently endorsed this intervention.²⁹ A similar operation by ECOWAS in Sierra Leone was again ex post facto sanctioned in Resolution 1132. Both of these actions were justified on humanitarian grounds. Kartashkin has argued that, 'the potential of the United Nations must be fully utilised,'³⁰ but in these examples when the intransigence of the international community leaves a deficit, these organisations stepped into the breach. The African Union has also intervened in Sudan, which is outlined below.

2. Recent trends outside of Intervention

One of the most interesting recent developments in the area is not necessarily the actual actions taken by states but the developments in statements made by states and the constituent agreements of the African Union and ECOWAS. Though whether these are also evidence of the development of new norms of customary international law is of course a question in and of itself as Farmer has put it, 'these disputes over the legal status of humanitarian intervention sometimes coincide with and appear heavily influenced by the disputants' divergent approaches to the question of how to identify any international legal norm.'³¹

One of the most curious developments is the Foreign Office principals on humanitarian intervention. Published in 2000, they have come a long way since the position taken in 1986, as outlined earlier. Douglas Hurd stated in 1992, that, 'not every action that a British or an American Government or a French Government takes has to be underwritten by a specific provision in a United Nation's resolution, we comply with international law... international law recognises extreme need.'³² Later senior legal council for the foreign office argued, 'We believe that international intervention without the invitation of a government can be justified in cases of extreme need.'³³ This gradual move away from the original position was a precursor to the principles, which followed in 2000.³⁴

²⁸ Legality of the Use of Force, *Yugoslavia v Belgium* ICJ Reports (1999).

²⁹ Security Council Resolution 788: Liberia 19 November 1992.

³⁰ Damrosch and Scheffer, *Law and the Use of Force in the New International Order*, (Westview Press, London, 1991); Kartashkin, *Human Rights and the Humanitarian Intervention*, 185, 193.

³¹ Ibid, Farmer, *An Inquiry into the Legitimacy of Humanitarian Intervention*, 185, 193.

³² British Yearbook of International Law (1992) 824.

³³ British Yearbook of International Law (1992) 825.

³⁴ Gray, Christine, *International Law and the Use of Force*, (1st Ed, Oxford University Press, 2000), 41, '(1) an intervention is an admission of failure of prevention, (2) we should maintain the principle that armed force should only be used as a last resort, (3) the immediate responsibility for halting violence rests with the state in which it occurs, (4) when faced with an overwhelming humanitarian catastrophe, which a government is unwilling or unable to prevent or is actually promoting, the international community should intervene, intervention in internal affairs is a sensitive issue, so there must be convincing evidence of extreme humanitarian distress on a large

The AU concluded its constituent agreement in 1999.³⁵ In Article 4 it states, 'The right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.' This is not qualified by any reference to the UN Charter, though in Article 3(e) it states to, 'encourage international co-operation, taking due account of the Charter of the United Nations and the Universal Declaration on Human Rights,' the specific article does not have any deference to the Charter. It appears that it sees itself as able to take action in a humanitarian crisis without specific authorisation by the Security Council, this seems to be the clearest statement yet as to the parameters countries are willing to lay themselves outside the UN.

The AU first test of their ability to deal with humanitarian crises has been the crises in the Darfur region of Sudan. While the Security Council has now moved to prosecute those involved in the crises in the Darfur region,³⁶ there was no positive action by the Security Council to intervene to prevent the crises, considerations such as the continuing peace settlement between the Northern government and Sudanese Rebel Groups appeared to take precedence. It did support the AU action in Darfur,³⁷ which involved a Committee of Member States on Inter- Sudanese Peace- Talks but more importantly the involvement of the African Mission in the Sudan³⁸ which among other duties reported on alleged violations of the ceasefire in the region.³⁹

ECOWAS adopted a new Charter in 1993. Having had experience in humanitarian intervention in Liberia and Sierra Leone; ECOWAS in Article 58 titled Regional Security, section (f) settled that it will, 'establish a regional peace and security system and peacekeeping forces when appropriate.'

Again, as in the AU Treaty, there is no deference to the UN Charter in this section, though further on in Article 83 of Chapter XX it states that it will co-operate with the AU and the UN. So similar to the AU it sees itself as able to transact outside the ambit of the UN use of force system on certain matters.

3. UN Reforms and possibilities for reform

What does the future hold for the doctrine? The development of the doctrine greatly depends on the Security Council and whether in the future it can achieve the unanimity

scale requiring urgent relief. It must be objectively clear that there is no practical alternative to the use of force to save lives, (5) any use of force should be proportionate to achieving the humanitarian purpose and carried out in accordance with international law, (6) any use of force should be collective, no individual country can reserve to itself the right to act on behalf of the international community.' This list mirrors others which have been put forward as a checklist which States should tick off before embarking on intervention.

³⁵ The Constitutive Act of the African Union, 2002.

³⁶ Security Council Resolution 1593 31st March (2005) Reports of the Secretary-General on the Sudan.

³⁷ Security Council Resolution 1574 19th November (2004) Reports of the Secretary-General on the Sudan.

³⁸ Assembly of the African Union Resolutions, Assembly/AU/Dec.68 (IV), Decision on the Situation in the Darfur Region of the Sudan and Assembly/AU/Dec.54 (III) Decision on Darfur.

³⁹ For example CVR no. 08/05 Alleged Attack on Solokoya Village on 10th Jan 2005., available from the African Union website, www.african-union.org.

necessary to act when it is necessary, if the Security Council fulfils its potential in this area, than this discussion would become moot.

However the Security Council has not acted when it has been necessary to do so. There was at least a willingness to sort out humanitarian crises under the UN umbrella in Somalia, Haiti, Rwanda and East Timor but to prevent recourse to unilateral intervention it must act in all serious situations.

If events follow the pattern in Kosovo, Northern Iraq, Liberia or Sierra Leone than humanitarian intervention outside the Charter will become more common. Should this be the reality, then the emergence of a more solid foundation to base these actions on would end the scrambling for a legal basis for interventions, leading to justifications that maybe more frank and honest.

Kofi Annan has said, 'emerging slowly, but I believe surely is an international norm against the violent repression of minorities that will and must take precedence over concerns of state sovereignty.'⁴⁰ The Secretary General would obviously prefer that this would happen within the UN, however all indications are that it will happen in any case, especially given the stance taken by ECOWAS and the AU.

The reforms put before the UN members have several proposals which may impact on humanitarian intervention. The report of the High Level Panel⁴¹ noted that there was an emerging norm of, 'collective responsibility to protect.'⁴² This appears to mirror the growing acceptance that intervention is necessary. It also stated that to be, 'credible and sustainable a collective security system needs to be effective, efficient and equitable.'⁴³ This is precisely what is necessary, to create a system where those who wish to be active in ending atrocities can be assured that the UN system will be effective, and where there is inaction, it is because intervention is unnecessary and not because politics have taken precedence.

The Report also refers to the Genocide Convention and recognises that Genocide anywhere is a threat to security and non-intervention in internal affairs cannot be used a defence.⁴⁴ Whether this extends to intervention outside the Charter but under the Convention is not illuminated upon. It later details a set of principals the Security Council should examine before authorising the use of force.⁴⁵ While these are very useful guides and if followed would lead to a situation where the Security Council could be relied upon to intervene, however reality may be otherwise.

The Report of the Secretary General *In Larger Freedom*,⁴⁶ in which the Secretary General calls for a new security consensus⁴⁷ pointing out that this is not a theoretical issue, a notion

⁴⁰ Press Release SG/SM/6949 of 7th April 1999.

⁴¹ Report of the High Level Panel on Threats, Challenges and Change. A/59/565.

⁴² Ibid Para 203.

⁴³ Ibid Para 31.

⁴⁴ Ibid Para 200.

⁴⁵ Ibid Para 207 (a) Seriousness of threat, (b) Proper purpose, (c) Last Resort, (d) Proportional means, (e) Balance of Consequences.

⁴⁶ *In larger freedom: towards development, security and human rights for all*. General Assembly A/59/2005.

⁴⁷ Ibid Para 81.

that academic lawyers need to perhaps at times remember that it thousands of lives in the balance and not simply abstract gymnastics.

One of the suggested revisions is a strengthening of the UN's peacekeeping capacity;⁴⁸ this may have an impact on intervention, as had forces in Rwanda had more resources, more may have been achieved in preventing the slaughter that did occur. This is presupposing that the peacekeeping force would be given the mandate to do what was necessary to protect civilians. This again returns to the problem of Security Council consensus.

In Section E, the Secretary turns to the Use of Force, in which the Secretary General recommends that the Security Council adopts a resolution setting out principals and expressing its intention to be guided by them when deciding whether to authorise or mandate the use of force.⁴⁹ It is later stated that, 'if national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect human rights...When such methods appear insufficient the Security Council may out of necessity decide to take action under the Charter of the United Nations, including enforcement action.'⁵⁰ This assuming there is a Security Council willing to take action. While this is not the place to go into the two suggestions proposed by the Secretary General for reform of the Security Council, the question that needs to be answered is whether it will allow for a more proactive Security Council when intervention is required. Will a larger more representative Security Council be able to take decisive action or will the usual politicking continue, leading to intervention outside of the UN framework to continue unabated.

IV. Conclusion

So what is the status of humanitarian intervention? What is clear is that both States and other international organisations have stepped up to the plate and openly committed themselves to the availability of humanitarian intervention with or without an explicit UN sanction of their actions.

What is not yet clear is whether the UN reforms are capable of turning the tide on the inexorable move towards intervention outside the UN. What is unambiguous from the overview of the history of intervention is that it has never quite left us. So while there has been a 50-year period after the advent of the Charter when it became practically illegal, whether it is still so is far from obvious.

Without doubt, continuity in Chapter VII of the UN Charter covering all uses of force and the rule of law is what the favoured option is. Arbitrary use of action independent of the UN, no matter which principals or guidelines are followed is a dangerous precedent, however it is a precedent which has occurred and the growing number of interventions peripheral to the UN has only increased the legitimisation of these developments.

If the proposed UN reforms are to bring about a new start in humanitarian intervention, then there not only needs the structural reforms but an entirely new mindset, where

⁴⁸ Ibid Para 112.

⁴⁹ Ibid Para 126.

⁵⁰ Ibid Para 135.

intervention, when necessary is followed through. This would entirely discredit any actions exterior to the UN, and may also act as a deterrent, as if there was a real possibility of UN action than there would be a stronger reason to not embark upon or to desist in certain actions. It appears that intervention is going to continue; if there is real commitment and consensus it will within the UN system, if not then we will continue on the path we are currently on until it becomes without doubt part of customary international law.