

Intervention: Trends and Challenges

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This chapter deals with intervention in internal conflicts. It focuses on three questions: whether to intervene, who intervenes, and how to intervene? For each of these three questions the paper will examine recent trends, identify policy challenges for the future and formulate policy recommendations. Particular attention will be given to the role of the United Nations.

In this paper, 'intervention' is defined as a coercive action intended to change the behavior of a party in a country in question. This may involve the threat or use of economic sanctions and the threat or use of force.¹

Since the end of the Cold War, the most pervasive form of violent conflict in the world has been internal conflict. These conflicts cause great suffering to civilian populations. They often involve direct and deliberate attacks on civilians. Intimidation, mutilation, forced expulsion and systematic slaughter are common. The numbers of people displaced, maimed or killed in such conflicts are counted in tens and hundreds of thousands, even in millions.² Moreover, these conflicts almost always produce huge flows of refugees. They also give rise to cross-border military activities, and often involve international criminal elements. In sum, these conflicts pose grave moral questions and almost always pose threats to regional and international peace and security.

The United Nations (UN) Security Council has increasingly intervened to stop internal conflicts. At various occasions in the 1990s, it has considered gross violations of human rights and civil strife "threats to international peace and security," and decided on

the imposition of economic sanctions, or authorized the use of force. Since 1989, the Council has imposed economic sanctions fourteen times—compared to twice in the period 1945 to 1988. (See Table 1.) In nine of these fourteen cases, sanctions were imposed to contain or stop internal conflicts.³ The use of force other than for self-defense was authorized in seven cases as opposed to three times in the period from 1945 to 1988. (See Table 2.). Ten of these cases concerned internal conflicts.⁴ Despite this increase in coercive action the results have been limited and in some cases coercive actions have led to outright failures.⁵

Moreover, the international consensus that seemed to emerge in the beginning of the 1990s is crumbling. The new globalized world order of the late 1990s appeared to many states as a very unequal order; an order that favored one state—the United States (US)—far more than others.⁶ Many states resented the ‘bullish’ behavior by the US and the US willingness to push multilateral organizations aside when such organizations could not agree on a course of action that was to the liking of the US. Consequently, articulating and organizing collective responses to peace and security threats was becoming increasingly difficult within the confines of the UN Security Council at the end of the 1990s.

The debate surrounding possible US-North Atlantic Treaty Organization (NATO) air strikes in Kosovo and Serbia epitomized the tensions amongst the members of the UN.⁷ Throughout the summer and autumn of 1998, China and Russia strongly opposed the possibility of a NATO intervention and threatened to cast their veto.⁸ In March 1999, the US and its NATO allies nonetheless went ahead and without consulting the Council or the UN General Assembly launched a 78-day air war against Belgrade.

The Kosovo crisis re-ignited the debate over humanitarian intervention. Unlike the early 1990s the question was not whether humanitarian considerations could be characterized as “threats to international peace and security” and thus justify intervention in the domestic affairs of the states, but rather whether such interventions needed the authorization of the UN Security Council.

I believe that this debate will intensify in the near and mid-term future. The March 1999 intervention by the US and its NATO allies in Kosovo and Serbia highlight the dilemmas faced today. On the one hand, in an increasingly interdependent and globalized world communal strife is difficult to ignore. Images of gross human rights abuses will frequently create pressures on outside powers to intervene. On the other hand, allowing for the use of force in humanitarian emergencies without UN Security Council authorization could easily lead to erosion of the general rule on the prohibition of the use of force and efforts to restrict its use in relations between states. It would also contribute to a weakening of the United Nations.

The UN Secretary-General, Kofi Annan, is acutely aware of the dilemmas and dangers involved. In September 1999 he took the debate to the UN General and urged states to develop criteria to permit humanitarian interventions in the absence of a consensus in the UN Security Council.⁹ Algeria, China and India—countries who had vehemently opposed the US-NATO intervention in Kosovo and Serbia in March 1999 and spoke against the idea of humanitarian intervention in the 1999 General Assembly debate—were asked by Annan what they would have done if in the case of Rwanda a coalition of states had been prepared to act in defense of the Tutsi population, but did not receive prompt UN Security Council authorization. “Should such a coalition have stood

aside and allowed the horror to unfold?” Similarly, those who heralded the Kosovo operation were asked what type of precedent their action had set? And how their action undermined the prohibition on the use of force and the system created after World War II to deal with such security threats?¹⁰

This paper will, firstly, address issues associated with the legal framework of intervention—whether to intervene. It will sketch the contours of the debate on a new doctrine and legal framework for humanitarian intervention. A doctrine that allows for humanitarian intervention absent a UN Security Council authorization is sorely needed. Such a doctrine should integrate the legal, political and operational aspects of humanitarian interventions.

The paper then turns to the agent issue—who intervenes. I argue that state actors will continue to dominate the scene. These actors may subcontract some activities to international organizations or private organizations, but subcontractors will rarely have much latitude for independent actions. Non-state actors, including international organizations, will often be important implementers of decisions by states. Heads of international organizations should be aware that the type of buck-passing that occurred in the 1990s in Somalia and Bosnia—when the United Nations was blamed for the failures of these operations—will continue. The success or failure of operations carried out by international organizations is in great part dependent on the support they receive from states. International organizations will want to adopt strategies that show where responsibility belongs for the outcomes of interventionary operations. Such strategies should enable them to minimize the possibilities for buck-passing.

Thirdly, the paper addresses questions related to the instruments of intervention—

how to intervene. I argue that six conditions need to be fulfilled for the effective multilateral use of coercive instruments. First, outside powers need to have a clear political objective. Second, they need to correctly identify and assess the political, economic and military characteristics of the group they seek to coerce. Third, someone needs to take the lead and guide and coordinate the coercive action. Fourth, who ever takes the lead of such an action, needs to build widespread international support. Fifth, sufficient resources need to be made available. Otherwise, policy pronouncements will not be followed by effective policy implementation. Sixth, outside powers need to develop an appropriate strategy, including escalation, exit and post-intervention strategies.

Finally, the paper will outline some policy recommendations, particularly as they relate to the United Nations.

The Legal Framework for Intervention

Under Chapter VII of the UN Charter the UN Security Council can impose coercive measures and disregard the general principle of non-intervention in the domestic affairs of states if it determines that a particular problem poses a “threat to international peace and security.”¹¹ In the 1990s the UN Security Council has shown great creativity in defining such threats. It has increasingly deemed internal conflicts and gross violations of human rights legitimate reasons for international action. At the end of the 1990s the idea that states should not be allowed to hide behind the shield of sovereignty when gross violations of human rights take place on their territory has firmly taken root.¹² That said, many states remain hesitant to accept a right of humanitarian intervention outside the UN

framework. They believe that the current system, whereby the UN Security Council determines whether a situation merits the imposition of economic sanctions or military intervention by qualifying such a situation a “threat to international peace and security” is the best guarantee yet, that economic embargoes and military interventions are not launched for self-serving political reasons.¹³

At the heart of the humanitarian intervention debate lies the question whether force can lawfully be used in situations other than those foreseen by the UN Charter. This debate opposes different legal schools of thought as well as declaratory policies and practices of states.

Most legal scholars and governments argue that the UN Charter contains a general prohibition on the use of force. This prohibition is embodied in 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 any state, or in any other manner inconsistent with the Purposes of the United Nations.

Scholars and governments generally maintain that the Charter allows for only two exceptions to this rule. One is in response to an armed attack (Article 51). The other is when the use of force is authorized by the UN Security Council in order to maintain or restore international peace and security (Article 42).¹⁴

That said, some legal scholars maintain that Article 2(4) does not contain a general and comprehensive prohibition on the use of force. They argue that it merely regulates the conditions under which force is prohibited, but leaves room for exceptions—only two of which are mentioned in the Charter (Articles 51 and 42). They defend the notion that the Charter permits the use of force in other circumstances. State practice, despite declaratory policies to the contrary, seems to concur with this view.

Over the years governments and legal scholars have argued that force can be lawfully used: to protect and rescue one's nationals abroad; to free people from colonial domination; to fight terrorism; and to protect people from gross violations of human rights.

The idea that force can be used to protect one's nationals abroad (or even nationals of another country) whose lives are in immediate danger, or who are in a hostage situation, has not formally been accepted as an exception to Article 2 (4) of the Charter. Yet a growing number of states have, if not openly condoned, not actively opposed such actions.¹⁵

Interventions to free people from colonial domination received widespread political support in the UN General Assembly in the 1960s and 70s, but legal scholars disagreed over the legality of the use of force in such cases.¹⁶ While many scholars thought that with decolonisation this issue had become irrelevant, the larger question of self-determination and the liberation of 'oppressed people' remained on the agenda. Indeed, throughout the Cold War socialist states supported military interventions in support of liberation movements and to preserve 'Marxist gains' within the eastern bloc. The US defended military interventions to counter communism and to further democracy during this period. These justifications for the use of force were repudiated by the International Court of Justice in 1986 in its decision on the *Nicaragua* case, and were abandoned with the end of the Cold War.¹⁷ The self-determination debate nonetheless resurfaced in the 1990s with the break-ups of Yugoslavia, and the Soviet Union and the increased focus on ethnic conflicts. Groups in Bosnia, Chechnya, Kosovo, Sri Lanka, and East Timor have all claimed a right to self determination, and justified their use of force

and requests for outside help on these grounds. Most legal scholars assert that there is no right of outside military intervention in those types of situations. Moreover, the UN Security Council has almost always called on outside powers to show restraint and imposed arms embargoes in these situations. That said, state practice is often at odds with legal rules or UN Security Council injunctions.

Claims regarding the legality of coercive action to combat terrorism, other than in hostage situations, are similarly shaky, but are gaining some ground. The strikes by the US in August 1998, when it destroyed a pharmaceutical plant in Sudan and training facilities in Afghanistan believed to be associated with Osama bin Laden—accused of being responsible for the terrorist attacks on the US embassies in Kenya and Tanzania—were widely criticized throughout the world. Yet, UN Security Council resolutions on terrorism in the 1990s testify to greater international concern with terrorism; they acknowledge that terrorism can endanger “the lives and well-being of individuals worldwide as well as the peace and security of all states”; they also call for greater international cooperation.¹⁸ Moreover, in 1992, the UN Security Council adopted for the first time economic sanctions on a state—Libya—because of its alleged support of international terrorists.¹⁹ In 1996, it imposed economic sanctions on Sudan, and in 1999, it did the same on the Taliban (Afghanistan).²⁰ The US has also increasingly resorted to the unilateral adoption of economic sanctions.²¹ That said, these unilateral sanctions are generally not followed by US allies.²²

The most divisive question and the question which has received most attention in the 1990s is military intervention to protect people from gross violations of human rights. The 1999 UN General Assembly debate showed that the majority of states clearly reject a

unilateral right to intervene for humanitarian purposes. China, Russia and most developing states claim that such a right would allow meddling in their internal affairs. They fear abuse from the US in particular and strongly condemned NATO's unauthorized intervention in Kosovo.

Armed intervention for humanitarian purposes received a bad name during the 19th century, when military interventions by European powers were frequently justified in terms of humanitarian purposes. Since the adoption of the UN Charter, states have generally avoided referring to humanitarian purposes when justifying their military interventions, relying instead on broad interpretations of self-defense, and 'assistance' to 'legitimate' governments.

The end of the Cold War resuscitated the question of military intervention for humanitarian purposes, and this notion has steadily received more supporters. Indeed, compared to the early 1990s the idea that the UN Security Council can order interventions for humanitarian purposes seems to be commonly accepted in 1999. It did so, for example, in Bosnia, Somalia, Haiti and Rwanda. It is the non-authorized intervention that poses a problem for most states. Genocide and gross violations of human rights are universally considered morally unacceptable acts. Many analysts and governments agree that in such cases economic sanctions or the threat of criminal prosecution are weak deterrents and even weaker instruments of compellence.²³ Yet, few have accepted the idea that in such cases military intervention has to become a duty. The absence of a legal framework within which such interventions can take place contributes to the unease states have when considering such interventions.²⁴ The current system, whereby the UN Security Council determines whether a situation merits military

intervention by qualifying such a situation a “threat to international peace and security,” is an insufficient warranty that the Council will indeed intervene when the next Rwanda comes around and legally prevents others from doing so.

Developing a legal framework, which would regulate unilateral interventions for humanitarian purposes would not ensure action. That said, it is a necessary condition to help deter humanitarian disasters in the future. Those who fear that the formulation of a doctrine of humanitarian intervention would lead to abuse—particularly Western abuse—should be reassured by Western behavior in Chenya, East Timor, Sierra Leone, or the Democratic Republic of Congo. In Chenya, Russia was permitted to muck around with impunity. In East Timor, the Australians intervened only after having received the consent of the Indonesian government. In Sierra Leone, Western governments’ reaction to the taking of 500 UN peacekeepers in May 2000 consisted of evacuating their nationals’ abroad. The UK send in 800 well-trained troops in May 2000, but the Defense Minister repeatedly told the press and others that their mission would be terminated in June 2000 and that their primary mandate was to evacuate and protect UK nationals abroad. The US government responsible for the negotiation of the peace deal which provided amnesty to Foday Sankoh—a man worthy of the epithet “war criminal” and responsible for the May 2000 crisis—wrung its hands and send the Reverend Jesse Jackson to neighboring Liberia! Finally, in the Democratic Republic of Congo only a fraction of the troops had been committed in May 2000. None of them were of US origin.

A New Doctrine and Legal Framework for Humanitarian Intervention

Several analysts and scholars have put forward proposals that would regulate recent state

practice and make humanitarian intervention legal under specific sets of circumstances. Two different approaches can be identified. The first elaborates on the framework laid down in the UN Charter. Proponents of this school advocate new interpretations of certain Charter articles. The second elaborates on law outside the UN Charter and draws on the inherent rights of states. Advocates of this school of thought argue that states have a unilateral right to humanitarian intervention.

Amongst the analysts who advocate a new look at the Charter, those who suggest an extended reading of Chapter VIII of the UN Charter—that is the Chapter that deals with regional arrangements—are the most convincing.²⁵ In essence, they propose to broaden the mandate of regional organizations and to give them the right under certain conditions to authorize the use of force.²⁶ Like the “Uniting for Peace Resolution”, which gives the UN General Assembly the right to recommend military action in case the Council is paralyzed, most of these proposals maintain the central role of the UN Security Council and allow for the activation of other loci of authority only in case of the Council’s incapacity to act.

For example, Winrich Kühne, a German analyst of the Stiftung Wissenschaft und Politik, has proposed to invest regional organizations with the authority to use force under three conditions. First, when the UN Security Council is unwilling or incapable to act. Second, when the UN Security Council has not explicitly denied the existence of a humanitarian crisis. Third, when the regional institution in question can act within the confines of a predetermined institutional structure that could authorize such action. Kühne proposes that the UN Security Council adopt a declaration that would invite regional organizations to develop such mechanisms and which would interpret Article 53

of the Charter as giving regional organizations a right of humanitarian intervention when the Council is unable or unwilling to act.²⁷ Bypassing the question whether NATO is a regional organization under the terms of Chapter VIII, under Kühne's proposal NATO's action in Kosovo would have been lawful.

There are three problems with the Kühne proposal and similar proposals. First, regional organizations might not always be the best intervenors in internal conflicts. Indeed, members of regional organizations are neighbors, and neighbors are the international actors most prone to having ulterior political motives for intervention. Indeed, they often meddle in unhelpful ways in such conflicts.²⁸ Second, these proposals merely shift the problem from the global level to the regional level. Indeed, the decisions of these regional authorities would be based on political considerations and not on a set of agreed upon principles—law. The fact that such decisions are being made collectively makes such decisions in and of itself not more lawful. More means greater might, but not necessarily greater right. Finally, the Kühne proposal would give the great powers a key role in deciding on interventions. Great powers could block small powers from intervening by adopting declarations in the Council that would nullify the existence of a humanitarian crisis. But an attempt to block intervention by any of the great powers could be opposed through the veto. In practice, this would mean that only the regional organizations in Africa or Asia would be subjected to international scrutiny. Of course, Kühne's proposal was designed to redress insufficient enthusiasm for intervention, rather than possible abuse. Yet, this feature of his proposal might make it unattractive to many developing countries.

Other analysts have argued that states have an inherent right to use force.²⁹ This

right, they say, is restricted by the UN Charter, but not prohibited by it. Several scholars have outlined conditions under which military intervention would be lawful.³⁰ Many draw on just war theories of the 19th century. These theories established criteria by which war could be considered just and legitimate. They include: *right authority*—which actor has the authority to decide on war? *just cause*—is the cause legitimate? *right intention*—what are the motives behind the launching of the war? *last resort*—have other actions been considered? *open declaration*—did war start with a declaration? *proportionality*—is the act of war proportionate to the harm inflicted? *reasonable hope*—is there a reasonable chance for a successful outcome?³¹ These criteria provide a useful framework when thinking about conditions under which intervention should be allowed. They point to the essential role of actors, objectives, strategies and outcomes.

Serge Sur, Professor of International Law at the University of Paris, incorporates these elements in his proposal for a new doctrine and legal framework for humanitarian intervention. He suggests that humanitarian intervention should be considered lawful under the following conditions. First, states would publicly declare in which cases they would reserve the right to intervene. They would do so in advance and not on the spur of the moment. For example, they could stipulate in a unilateral or collective declaration that they would intervene in cases covered by Article 3 of the Geneva Conventions or in such cases as covered by the statutes of the international criminal tribunals set up for the former Yugoslavia and Rwanda, or those of the international criminal court.³² This right of intervention would be a discretionary right. States would not be obliged to intervene, neither could third parties hold them responsible for not intervening. Second, states would outline in advance how they would intervene. They would specify the military

means they would consider employing. In view of the controversy over the use of air power in Kosovo and a military doctrine which allows for zero death on the side of the intervenor, one should force states to envisage the deployment of ground troops if the situation so demands. Moreover, states would want to make it clear that the military intervention would not itself become a violation of humanitarian law.³³ States would also have to clarify the timing of the intervention. In sum, states would outline both entry and exit strategies. Third, states would outline how they would coordinate and harmonize their military intervention with efforts for national and international criminal prosecution of those responsible for the humanitarian crisis. Such prosecution is foreseen in the Geneva Conventions and is an integral part of international humanitarian law.³⁴

By emphasizing that a *just* doctrine of humanitarian intervention is not *just* about legal authority, but also about ensuring that such interventions have strong political support and sufficient military resources Sur comes full circle and permits to integrate two other problems that have plagued coercive actions in the 1990s—political commitment and material resources. Moreover, his approach also permits to focus on the long-term problems of intervention. Indeed, military action is often but the beginning of intervention. The success or failure of a military intervention ultimately depends on the success or failure of the post-intervention phase. Those who contemplate military intervention should have a game plan ready for that phase. Reintroducing the United Nations, including the UN Security Council, at this stage, would allow to fully legitimize or disavow unilateral or collective unauthorized interventions post-facto. Involving regional organizations at this stage should ensure integration of the conflict-striven territories in their natural geographic space and might give such organizations a stake in

making the post-intervention phase succeed. In Kosovo, post-facto involvement of the UN Security Council helped to legitimize the unauthorized US-NATO intervention. The involvement of the European Union helps to ensure that resources will be made available to the post-conflict operation.

Every approach contains possibilities for abuse, and none provides a guarantee to future victims of genocide or gross violations of human rights. Yet forcing states to define the parameters under which they would consider military intervention for humanitarian purposes might introduce a measure of predictability, and thus have a deterrent effect. It would also constitute a start at undercutting arguments about double standards, and serve as a hedge against accusations that interventions are carried out solely in a state's own self-interest and mainly of a self-serving nature.

Reaching some measure of international consensus on when, why, and whether to intervene for humanitarian purposes is sorely needed.³⁵ The United Nations has an important role in this regard. It will be crucial in creating a new consensus. Devising a framework under which military intervention for humanitarian purposes can lawfully be undertaken should go hand in hand with an effort to mobilize public support for such interventions. Indeed, humanitarian interventions are long-term operations. As such, they are not sustainable without large public support. All actors of society have an important role to play in supporting and forging a consensus for humanitarian interventions. Research institutes and universities have a particularly important role to play: they should lay out the intellectual and moral dilemmas of such endeavors.

The Agents of Intervention

Following the UN Charter, military intervention was to be carried out by armed forces put at the disposal of the Council. These forces were supposed to be commanded by the UN Military Staff Committee.³⁶ However, because of the East-West conflict, such an international army was never established. Although the Cold War is over, it seems unlikely that the UN will be endowed with its own troops in the near future.

Proposals in the early 1990s calling for the establishment of a UN Volunteer Military Force or the creation of UN peace enforcement units remained extremely controversial.³⁷ In 1993, the UN introduced a stand-by program that called on member-states to earmark their forces for UN operations. The limits of this program were soon highlighted. Indeed, during the genocide in Rwanda, the UN Secretary-General was unable to find 5,000 soldiers—despite the pledge of 19 governments to keep 31,000 troops available on a stand-by basis.³⁸ By 1995, the idea of stand-by forces was limited to a stand-by arrangements system whereby states made conditional pledges to contribute troops to future UN peacekeeping operations. In May 2000, 88 states had pledged a total of some 147,900 troops.³⁹ Yet, few of these states had volunteered troops for the missions in Sierra Leone and the Democratic Republic of Congo.⁴⁰ Ideas for a Rapid Reaction Force have been tabled since 1992, but such forces remain very much in a conceptual stage at the end of 1999. The UN secretariat now talks less ambitiously about a core Headquarters unit that could be quickly deployed.

In sum, as Brian Urquhart put it, the idea of a UN force is “further than ever from becoming a reality.”⁴¹ Troops are put at the disposal of the UN on an ad hoc basis. At times they are put under UN command. At times these troops are put under national command, or that of a regional organization. Most peacekeeping operations—that is,

operations where local parties have agreed to the deployment of international forces—are under UN command. Military interventions, including UN enforcement operations, are generally under national command or that of a regional organization because of the risk of casualties. In the latter case, there is often a lead state that drives and controls the operation. In Europe it is NATO and within NATO it is the US; in Western Africa it is the Military Observer Group (ECOMOG) of the Economic Community of West African States (ECOWAS) and within ECOMOG it is Nigeria; in East Timor it is Australia.

Whether a country will intervene or lead a ‘coalition of the willing’ is a function of the international environment (including the legal environment) and national interests (including national military capabilities and domestic political considerations). For large-scale operations, the US has to take the lead, if only because it alone possesses the capabilities to carry out such operations.⁴² Moreover, involvement—even limited involvement—of the US will signal seriousness of the effort.

Unfortunately, the US has a mixed track record in this respect.⁴³ In many cases, the US failed to take any meaningful action; Rwanda, Zaire/Congo, and East Timor are notable examples. The US took the lead in Bosnia after agonizing for three years about whether and how to get involved in the conflict.⁴⁴ In Somalia, it took the lead for four months, but it then distanced itself from the operation and eventually pulled out altogether.⁴⁵ In Haiti, the US decided and acted only in 1994, three years after Jean Bertrand Aristide, the democratically elected President, was deposed in a military coup.⁴⁶ Similarly, in 1998 and 1999 the US was hesitant to intervene in Kosovo.⁴⁷

Other countries have also taken up leadership roles but these interventions have succeeded only if they have been supported by a regional or global power. Italy, because

of its interests in the region and because it was directly affected by the crisis in Albania in 1997, took the lead for Operation Alba. It managed to secure both UN Security Council authorization and NATO support, and it successfully completed its mission. In 1999, Australia took the lead in East Timor. Given the lukewarm support of the great powers for intervention, the success of the Australian mission was dependent on Indonesian cooperation; indeed, Australia intervened only after it had secured approval from the Indonesian government.

Inversely, the multinational force authorized by the UN Security Council in November 1996 to stave off the starvation of hundreds of thousands of Hutu refugees in Zaire and to create humanitarian corridors to lead them back into Rwanda failed; Washington and Paris were unwilling to lead and provide support for this operation. Canada, which had been given lead responsibility for the mission was unable to pull off the operation on its own. Similarly, the UN force in Sierra Leone failed miserably to uphold its authority when attacked in May 2000. Only after the United Kingdom had introduced some 800 well-trained troops did tension started to subside in Sierra Leone.

In the absence of agreement within the UN Security Council, regional organizations are an attractive alternative to states contemplating military interventions. They add political legitimacy to such operations. This happened in Liberia and Sierra Leone where Nigeria used ECOMOG, and in Kosovo, where the US used NATO. That said, as noted above the legal justifications for intervention by these organizations was dubious.⁴⁸

Many scholars and policymakers emphasize the importance of developing and sustaining domestic support for international actions. They argue that a country will only

take the lead if it can obtain domestic support for such an action.⁴⁹ Domestic politics and domestic public opinion can thus be seen as separate agents that influence decisions on intervention.

Domestic support is often believed to be dependent on keeping combat casualties to a minimum. The conventional wisdom is that the riskier an operation, the weaker the domestic support for action. This explains why US policymakers, in particular, were wary of intervening in Bosnia, Somalia, Rwanda, and Haiti. However, a series of public opinion polls conducted at the University of Maryland, as well as a series of studies by the Triangle Institute for Security Studies, show that the American public will support military interventions that are morally and politically compelling.⁵⁰ For example, in a 1999 poll people were asked to identify the highest number of American military deaths that would be acceptable to stabilize a democratic government in Congo; a figure as high as 6,861 casualties was given. Similarly, the public was willing to tolerate 29,853 deaths to prevent Iraq from obtaining weapons of mass destruction.⁵¹

European politicians, for their part, are not immune to domestic concerns about casualties, but they believe that the casualty-tolerance index is higher in Europe—particularly France and the UK—than in the US.

Given the reluctance of many Western powers to engage peacekeepers in far away lands and their fear of combat casualties, some authors have advocated hiring private military corporations.⁵² In the 1990s private military forces have increasingly been hired for logistical support, to dispense military advice, to provide security services (protection of property and personnel), and for combat. For example, in the former Yugoslavia the US has hired an NGO run by retired US military personnel—*Military Professional*

Resources Incorporated (MPRI)—to dispense military advice and train the Croat military. In other cases, private military companies were hired by states to fight rebels on their territory. For example, *Executive Outcomes* (EO)—a company run by former South African military—was hired by Sierra Leone and Angola to fight rebels on their territory.⁵³

Some authors have pointed out that in certain cases, these private military forces have helped to stop internal strife. David Shearer, for example, credits EO with bringing the warring parties in Sierra Leone to the negotiating table in 1996.⁵⁴ Some believe that they may be a solution to the UN's chronic lack of military personnel in messy and risky situations. Others, however, believe that the activities of these companies should be more closely monitored and regulated.

Indeed, many of these companies operate in a legal vacuum. They do business predominantly in Africa. Often countries or rebel groups pay these companies not in hard currency, but in mining rights. At times, mining companies themselves have agreed to pay for the services of these private military companies in return for mining rights. In many instances, there are close links between the mining companies and military companies.

The diamond mining business in Africa is very profitable. According to estimates, the African diamond trade represents between US \$ 5 and 7 billion a year. A country such as Sierra Leone, ripped apart by an extremely bloody war that has lasted over 8 years and killed tens of thousands of people, and mutilated many more, still produces between US \$ 300 and 450 million worth of diamonds each year. Not surprisingly, the stakes in this conflict are high, not only for the warring factions but also for the mining

companies and their military sister organizations.⁵⁵ This of course also makes these private military corporations more than simple hirelings: it makes them active actors the conflicts in question. Ominously, they may actually profit from dragging out and escalating such conflicts.

David Shearer has suggested that the international community should engage these companies, instead of banning them or pretending that they do not exist. Yet, it seems that that is exactly what is happening. Increasingly, these companies perform tasks that governments cannot or will not carry out. Moreover, many of these activities are initiated without any consideration of the longer-term consequences of these operations. Finally, many of these activities take place in both a domestic and international legal vacuum; here again an internationally agreed upon legal framework is sorely needed.

International organizations also increasingly engage private firms, but thus far the role of these firms has been limited to the protection of property and civilian personnel. Some believe that success in this domain may lead to employing such firms for combat purposes or enforcement operations. That, however, would amount to giving the UN its own standing forces. Given the reluctance of member-states to do so and the lack of UN financial resources, this seems an unlikely prospect.

In this respect it is important to make a clear distinction between hiring the services of such firms and entering into partnerships with them. The United Nations might wish to do the former; it should, however, not be allowed to do the latter. The current enthusiasm of the United Nations to enter into business partnerships may be innocent and even mutually profitable in certain areas. However, questions of war and peace and life and death should not be governed by profit motives; it is contrary to

everything the UN stands for.

The Instruments of Intervention

States have two main coercive instruments available when considering intervention: the use of force and economic sanctions.⁵⁶ Six conditions need to be fulfilled for the effective use of coercive instruments.⁵⁷

First, outside powers need to have a clear idea of the political objectives they hope to achieve. They should try to pursue one objective at a time. Multiple objectives muddy the waters. The imposition of sanctions or the use of military force should not be intended to punish troublemakers. These instruments should be used to change behavior, or to bring those responsible to justice.

Second, outside powers need to correctly assess the economic, political, and military characteristics of the target. It may be noted that the targets of intervention will often be non-state actors.⁵⁸ Our knowledge of how coercive actions affect targets—particularly non-state targets—is limited. This cripples the development of a coherent and effective strategy. The imposition of economic sanctions on some targets is ineffective and can even be counterproductive. For example, imposing economic sanctions on parties in very poor states (Burundi) or failed states (Somalia) is at best futile. Similarly, the effectiveness of the use of force is dependent on the characteristics of the target. Aiming the use of force at “the conflict,” as was done in the early 1990s in Bosnia and Somalia, instead of at the belligerent parties, has led to dramatic policy failures.

Third, one country or international organization has to take the lead in interventions. Leadership gives direction to interventions and is one of the keys to

building strong coalitions. Moreover, in the absence of a leader, sanctions regimes will quickly be crippled because of interpretation problems and multiple as well as conflicting purposes may be proposed for military interventions. This frequently leads to failure. In theory, international leadership should come from the UN Security Council. In practice, it comes from individual states. A leader has to be able to chart an effective course of action and articulate its position to others. A lot depends on the political and military strength of the country in question. That said, being a leader does not mean bullying others around. True leaders know how to translate national interests into global and international interests and persuade other states to get on board.

Fourth, leaders need to build strong international coalitions of support for proposed coercive undertakings. Obtaining international support for these interventions is a function of the threat that has been posed to regional and international security and human life. It is also dependent on national interests and leadership. The more countries see an internal conflict as a threat to their own security and a threat to higher values, the easier it will be to build a coalition to support international intervention. The participation of many states is necessary for the success of sanctions regimes. It may also be attractive when it comes to the use of military force; indeed, it may help to ensure that sufficient troops are available for coercive actions. Moreover, it may help to bring down costs. The United Nations has an important role to play in building and organizing international support for coercive actions, and it can provide legitimacy to coercive actions.

Fifth, outside powers need to ensure that enough resources are available. As far as economic sanctions regimes are concerned, resources may be needed to implement and enforce the regime. Sanction regimes often experience implementation problems.

Resources may also be needed to compensate some states for losses associated with the implementation of sanctions. Similarly, military interventions need to be endowed with sufficient resources. This is not to say that to be successful such operations need to have overwhelming military capabilities, but they need enough firepower and the right mix of forces—air power and ground troops—to get the job done.

Sixth, outside powers need to adopt appropriate strategies. Intervention strategies are the subject of a large debate within the scholarly and analytical communities. Two main schools of thought exist on the imposition of sanctions and the use of force. The first school of thought believes that coercive instruments are most effective when imposed immediately and comprehensively. The second school of thought believes that coercive instruments can—and often, should—be imposed gradually. Both schools of thought are right some of the time. Some cases warrant swift and comprehensive coercive actions; others call for gradual approaches.

The use of economic sanctions and military force should be proportionate to the goal one is trying to achieve. Limited goals do not warrant the massive imposition of sanctions or the massive use of force. If one's goals are more ambitious, stronger coercive actions are generally called for. If the threat to international peace and security or human life is both significant and immediate, strong sanctions and military operations might be needed. Less urgent situations call for the use of more incremental approaches.

The political, economic and military characteristics of the target should also guide one's selection of a strategy. For example, authoritarian regimes are less vulnerable to economic sanctions than democratic regimes; when dealing with an authoritarian regime, it may be advisable to forgo economic sanctions altogether and threaten the use of force

immediately. Similarly, small guerrilla groups are mostly immune to economic sanctions. Many sanction regimes stay in place for a long time and often start producing adverse social and humanitarian effects. Contrary to what many think such effects rarely lead to the overthrow of the politicians in place or a change in behavior of the political elites. On the contrary, empirical evidence in the former Yugoslavia, Haiti, and Iraq tends to confirm that prolonged sanctions strengthen—rather than weaken—the political regimes in place. The existence and level of development of a political opposition in the target country is in this respect very important. If the opposition is weak, the imposition of comprehensive sanctions may ruin their chances to develop into a real opposition. This happened in the FRY, for example. Economic and military characteristics of the target should also guide coercive strategies. For example, weak economies should be hit with gradual and partial sanctions. On the contrary, robust economies, as well as centrally planned economies should be hit swiftly and comprehensively, because of their ability to shift resources around they are better able to withstand sanctions. In the same vein, the limited use of force may be sufficient in conventional wars. Indeed, traditional military organizations may be more vulnerable to the coercive uses of force than guerrilla or insurgent fighters. Much has been written about the force of air power, particularly after Kosovo. Air power remains an extremely problematic tool in internal conflict situations and in situations where gross violations of human rights are taking place. It is often forgotten that Bosnia showed the limited utility of air power in these types of situations; it demonstrated that air strikes can not substitute for ground forces. The use of air power in the Balkans in 1999 also raises very important questions about NATO's targeting policy and its utilization of cluster bombs.

Coercive strategies should also be flexible. As time goes by, the economic, military and political characteristics of a target can change. The coercer's objectives and means may also change over time. A strategy that was sound early on in a conflict, therefore, may no longer be effective later in the conflict. Finally, all good strategies should contain exit strategies. Exit strategies should not be confused with exit schedules. Exits need to be based on local political and strategic conditions—not arbitrary and rigid timetables. They should also encompass a post-intervention strategy designed to tackle long-term economic and political problems. Outside powers that are considering intervention should realize that interventions entail more than the imposition of economic sanctions or the activation of the military. They should be prepared to make long-term—even open ended—commitments.

More generally, the development of economic sanctions and military strategies should not be seen as independent undertakings. Economic sanctions strategies should include determinations about when to escalate and threaten the use of military force. The imposition of economic sanctions and the use of military force should therefore be seen as two points on a coercive continuum and two complementary policy options.

To sum up, the effective use of economic sanctions and military force depends on: (1) having a clear purpose; (2) correctly assessing the target; (3) leadership; (4) coalition support; (5) providing sufficient resources to ensure effective implementation and execution; (6) having an appropriate strategy, including an exit and post-intervention strategy.

This may seem commonsensical, but the fact of the matter is that many post-Cold War interventions have failed to meet these conditions. They consequently failed to have

the desired effects.

The Role of the United Nations

The United Nations has an important role to play both in legitimizing and in helping to monitor and implement coercive actions. As far as economic sanctions are concerned, the United Nations Secretariat should advocate a more integrated use of the UN Sanction Committees. These Committees set up to examine and promulgate guidelines to facilitate implementation of sanction regimes should be given greater authority to interpret sanction provisions. At present, because sanction resolutions do not expressly foresee interpretative functions for sanctions committees, individual states are free to reject the guidance and advice given by the committees. Giving the UN Sanctions Committees interpretative authority binding on all UN members would increase uniformity and implementation—and hence the effectiveness of these regimes. Establishing only one Sanctions Committee would go a long way in achieving this.

Similarly, the economic sanction monitoring capacity of the UN needs to be strengthened. The experience of the European Union in the monitoring and enforcement of sanctions toward the former Yugoslavia is very useful in this regard. It showed that with relative limited means one could monitor trade and traffic.

What goes for economic sanctions regimes also goes for military interventions. The United Nations badly needs to update its monitoring and oversight mechanisms. This becomes all the more important when most of the coercive interventions take place outside the purview of the UN. Regular reporting mechanisms need to be established. One could also envisage the establishment of a Security Council Oversight Committee

for military operations. Such a Committee, like the Sanctions Committees, should be a subsidiary organ of the Council and have the same membership as the Council. This would be preferable to using and revitalizing the Military Staff Committee. Indeed, the Military Staff Committee, because of its limited membership—the Chiefs of Staff of the permanent members of the Security Council—is not appealing to most UN member-states. In as much as possible, the deliberations of this Committee should be open to other UN member-states. Non-governmental organizations should be given rights of petition, and the proceedings of this Committee should be made public. Transparency in this domain is essential.

The United Nations can also be very instrumental in forging a consensus on the conditions and criteria for humanitarian interventions. The United Nations Secretariat should initiate a wide variety of studies and involve experts and research institutes from around the world.⁵⁹ Following its experience during the Cold War in the arms control field, the United Nations may wish to set up different independent group of non-governmental experts to study the matter of humanitarian intervention and the use of coercive instruments in all its aspects. For example, one group could conduct a systematic study of past state practice and legal arguments and try to identify criteria for humanitarian intervention. The International Legal Commission could also be invited to express its opinion on this issue.⁶⁰ Another could tackle the political issues related to intervention by outside powers, including the impact of domestic politics. A third group could look at the operational and military aspects. A fourth group could look at the specific problems of the implementation of peace agreements and how to deal with spoilers like Foday Sankoh. Following these inventory exercises, governmental expert

groups could be established. Given the nature of the problem, it will be important to de-politicize the meetings of both the non-governmental and governmental expert groups as much as possible. Only when some intellectual clarity has been reached can one envisage the establishment of governmental groups of experts.

Notwithstanding the primary responsibility of the UN Security Council in these matters, the UN Security Council and the UN General Assembly could jointly decide to finance and set up such groups. Ultimately, the results of these studies could be discussed in both the Council and the Assembly and possibly give rise to a joint declaration or resolution. An amendment of the Charter might follow. This, of course, will only happen—if at all—very down the road.⁶¹

Finally, the United Nations should be given a key role in organizing and coordinating the long-term commitments that are needed to eradicate the underlying sources of communal conflict. As noted, above, regional organizations should be intimately involved in this process, but ultimate oversight should still rest with the United Nations. This will avoid regional politics from taking over.

The United Nations experiences in Kosovo, East Timor, Sierra Leone and the Democratic Republic of Congo will have long-lasting effects on the organization. While success or failure will depend on the material and political support of states, the UN Secretariat also has an enormous responsibility. It should not squander the meager resources it has been given.

Unfortunately, the May 2000 crisis in Sierra Leone indicated that the lessons learned in the 1990s—in particular thou shall not send lightly armed peacekeepers into a violent or potentially violent situation—were not acted upon. After the Somalia, Rwanda

and Bosnia debacles of the early 1990s, few UN missions were launched. Indeed, few states had the stomach to deploy the robust type of forces needed. That said, in the wake of the 1999 US-NATO intervention in Kosovo, the UN Security Council established three major missions—in East Timor, in Sierra Leone and in the Democratic Republic of the Congo. All were equipped with a Chapter VII—enforcement—mandate. Unfortunately resources to carry out such a mandate lagged behind. This mismatch of mandate and resources was very reminiscent of the agonizing UN missions of the early 1990s.

The UN Secretary-General should protect the Organization from such irresponsible behavior of states by clearly outlining the options and their respective strengths and limitations.⁶² In some cases, he should refuse a mission and make his case publicly. The UN Secretary-General should be relentless in going public with such information. That said, he should also make information publicly available that is damaging to the secretariat and shows its failures. The publication of the report on the fall of Srebrenica and the one on UN action in Rwanda during the 1994 genocide are in this respect encouraging.⁶³ We await the report on the mission in Sierra Leone and subsequent action.

¹ It may also involve criminal prosecution. This aspect of intervention, although important, will not be covered in this paper. In the case of the former Yugoslavia and Rwanda, the UN Security Council established International Criminal Tribunals tasked with bringing to justice those responsible for war crimes and other gross violations of human rights.

² Since 1990 wars have claimed more than 5 million lives. See UN Secretary-General Commencement Address at Paul Nitze School of Advanced International Studies, John Hopkins University, *United Nations Press Release*, SG/SM/7421, May 25, 2000.

³ Sanctions to quell internal conflict were imposed on: the Republics of the former Yugoslavia; the FRY; the Bosnian Serbs; Somalia; Haiti; Liberia; Unita (Angola); Rwanda; and Sierra Leone. In the case of Iraq sanctions were imposed to force Iraq to end its occupation of Kuwait and subsequently to ensure Iraqi compliance with UNSC Res. 687 (1991) of April 3, 1991. In the case of Eritrea and Ethiopia an arms embargo was imposed to stop war between these two countries. In the case of Afghanistan, Libya and Sudan sanctions were imposed to force those countries to extradite individuals suspected of terrorist attacks.

⁴ Military force was authorized in: Bosnia; Somalia; Rwanda; Haiti; Zaire; Albania; Kosovo; East Timor; Sierra Leone; and the Democratic Republic of Congo (DRC). Troops engaged in all these operations received Chapter VII—enforcement—mandates and were authorized to use force for purposes other than self-defense—not all of them did. Military force was also authorized in the case of Iraq. Yet, this was a more classical inter-state conflict. The UN Security Council did not authorize the initial military intervention in Kosovo in March 1999, but authorized an international presence with an enforcement mandate, subsequently. See UNSC Res. 1244 (1999) of June 10, 1999.

⁵ For a review of UN economic sanction regimes see, for example, David Cortright and George Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Boulder/London: Lynne Rienner Publishers, 2000); and Chantal de Jonge Oudraat, “Making Economic Sanctions Work,” in Chester Crocker, Fen Hampson and Pamela

Aall, eds., *Managing Global Chaos*, 2nd.ed. (Washington DC: USIP Press, 2001). For a review of coercive military operations see, for example, Donald C.F. Daniel and Bradd C. Hayes with Chantal de Jonge Oudraat, *Coercive Inducement and the Containment of International Crises* (Washington DC: USIP Press, 1999); Chantal de Jonge Oudraat, “L’ONU, les conflits internes et le recours à la force armée,” *Annuaire Français de Relations Internationales 2000*, Vol.1 (Brussels: Brylant, 2000), pp.817-830; and Peter Viggo Jakobsen, *Western Use of Coercive Diplomacy After the Cold War: A Challenge for Theory and Practice* (New York: St. Martins Press, 1998).

⁶ Realist and neo-realist theory has shown that international cooperation becomes very difficult when actors believe that such cooperation might result in relative gains that can be exploited to the advantage of one and the disadvantage of others. See, for example, John Mearsheimer, “The False Promise of International Institutions,” *International Security*, Vol. 19, No.3, Winter 1994-1995, pp.5-49.

⁷ See also the contribution by David Malone “Multilateralism”.

⁸ In October 1998 the North Atlantic Council had authorized the Supreme Allied Commander in Europe (SACEUR) to launch air strikes if Milosevic did not comply with UNSC Res. 1199 (1998) of September 23, 1998. NATO’s activation order was suspended, but not annulled, after Richard Holbrooke reached an agreement with Milosevic in October 1998.

⁹ In the 1999 UN General Assembly debate, some states emphasized the need for a set of generally accepted rules and guidelines that would regulate humanitarian interventions. That said, they were clearly in the minority, and they were not very specific. See, for

example, the statements of New Zealand, Lithuania, Sweden, Spain, Brazil, Argentina, Egypt, and the Republic of Korea.

¹⁰ See “Secretary-General Presents His Annual Report to General Assembly,” *United Nations Press Release*, SG/SM/7136 and GA/9596, September 20, 1999. In March 2000, Kofi Annan also launched a major study on peace operations. The results of this report are expected to be published in July 2000. See *UN Press Briefing*, March 7, 2000.

¹¹ See *Charter of the United Nations*, Articles 39, 42 and 2 (7). Under Charter Articles 24 and 25 states promise to accept and carry out the decisions by the Council.

¹² See in this regard also the 1991 Annual Report of the UN Secretary-General, Javier Perez de Cuellar, A/46/1, September 1991.

¹³ In 1950 the UN General Assembly had given itself the right to vote on the use of force to restore or maintain international peace and security in case the Council was log jammed. This *Uniting for Peace* resolution was adopted by the UN General Assembly in November 1950 during the Korea crisis. See UNGA Res. 377 (V) of November 3, 1950. The Assembly has invoked the resolution several times, however, never to recommend the use of force. Moreover, legal experts disagree over the question whether the UN General Assembly is, indeed, entitled to intervene in case the Council is divided. The International Court of Justice in its advisory opinion of 20 July 1962 on *Certain Expenses of the United Nations* ruled that *only* the Council could order enforcement actions and authorize the use of force. For details on the legal debate, see René Degni-Segui, "Fonctions et Pouvoirs: Article 24," in Jean Pierre Cot and Alain Pellet, eds., *La Charte des Nations Unies* (Paris: Economica, 1991, 2ième ed.), pp. 451-458; Anthony Clark Arend and Robert J. Beck, *International Law and the Use of Force* (London/New York:

Routledge, 1993), pp. 59-60 and 66-67; and John F. Murphy, "Force and Arms," in Christopher C. Joyner, ed., *The United Nations and International Law* (New York: Cambridge University Press: American Society of International Law), 1997), pp. 108-109.

¹⁴ The cases foreseen in Article 53(1) and Article 107 that permit action against World War II enemy states have become obsolete.

¹⁵ See Anthony Clark Arend and Robert J. Beck, *International Law and the Use of Force* (London and New York: Routledge, 1993). Arend and Beck argue that "... there exists a substantial gap between, on the one hand, the 'restrictionist' views of most states and legal scholars, and, on the other, the consistent practice of those states whose interests (have been) specially affected.' Such a significant discrepancy would seem to call into question the existence of any authoritative and controlling rule prohibiting state intervention to protect nationals." p. 111. See also Natalino Ronzitti, *Rescuing Nationals Abroad Through Military Coercion and Intervention on Grounds of Humanity* (Dordrecht: Martinus Nijhoff, 1985). Ronzitti argues "that a process is under way that might entail the creation of a new rule of customary international law permitting intervention for protecting nationals abroad." p.76.

¹⁶ See UNGA Res. 2625, October 24, 1970.

¹⁷ See, Rein Mullerson, "Self Defense in the Contemporary World," in Lori Fisler Damrosch and David J. Scheffer, eds., *Law and Force in the New International Order* (Boulder: Westview Press, 1991), p.16. Mullerson asserts that the Court unambiguously condemned these doctrines as contrary to international law and cites the following passage: "The Court cannot contemplate the creation of a new rule opening up a right of

intervention by one state against another on the ground that the latter has opted for some particular ideology or political system.”

¹⁸ See, for example, UNSC Res. 1269 (1999) of October 19, 1999. That said, efforts to combat terrorism are seen first and foremost as national efforts; states are encouraged to prevent and suppress such activities on their own territories, not uninvited on the territories of other states.

¹⁹ See UNSC Res. 748 (1992) of March 31, 1992. Sanctions were imposed under Chapter VII of the UN Charter. They were lifted on April 5, 1999.

²⁰ Sanctions on Sudan were imposed because of Sudan’s refusal to extradite three individuals accused of the assassination attempt on the Egyptian President Mubarak. See UNSCR Res. 1054 (1996) of April 26, 1996. Sanctions went into effect on May 10, 1996. They consisted of restrictions on the travel of Sudanese diplomatic personnel. Sanctions on the Taliban were imposed because of the Taliban’s refusal to hand over Osama Bin Laden and his associates for trial. See UNSC Res. 1267 (1999) of October 15, 1999 for the sanctions on the Taliban (Afghanistan). Sanctions went into effect on November 15, 1999, and consisted of a freeze on financial assets and a boycott of Taliban owned aircraft.

²¹ In 1999, seven countries believed to be supporting international terrorism—Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria—were subjected to unilateral US sanctions, as were 202 terrorist organizations and 59 individuals. See Office of Foreign Assets Control, US Department of the Treasury, *Terrorism: A Summary of Terrorism Sanctions Regulations, Terrorism List of Government Sanctions Regulations, and Foreign Terrorist Organizations Sanctions Regulations*, 25 June, 1999. (www.treas.gov/ofac)

²² The unilateral adoption of economic sanctions for coercive purposes has been condemned in many UN General Assembly resolutions. See, for example, UNGA Res. 2131 (XX) of December 21, 1965. Yet, unlike the use of force, the Charter does not contain a specific prohibition on the coercive use of economic sanctions nor does it prohibit states from imposing sanctions unilaterally if they so wish. Moreover, it may be recalled that in the *Nicaragua* case the International Court of Justice condemned the US for its military support to the Contras, but it did not condemn the US for imposing an economic embargo on Nicaragua. In sum, unlike the use of force, there is no legal impediment to the unilateral imposition of sanctions.

²³ Deterrence can be defined as action that prevents an adversary from doing something that one does not want it to do and that it might otherwise be tempted to do. Compellence can be defined as action that stops an adversary from doing something that it has already undertaken or to get it to do something that it has not yet undertaken. On the difference between deterrence and compellence, see Thomas C. Schelling, *Arms and Influence* (New Haven: Yale University Press, 1966), pp.69-91; and Robert J. Art, "To What Ends Military Power?," *International Security*, Vol.4, No.4, Spring 1980, pp.6-7.

²⁴ Many NATO states had serious misgivings with respect to the legal grounds of NATO's intervention. See Catherine Guicherd, "International Law and the War in Kosovo," *Survival*, Vol.41, No.2, Summer 1999, pp. 19-34.

²⁵ Some analysts advocate a new interpretation of article 2(4) of the Charter, which prohibits "the threat, or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations." They argue that humanitarian assistance and intervention is not directed

against the territorial integrity or political independence of the state. This argument does not seem to be supported by practice. Indeed, humanitarian intervention often entails a profound overhaul of state structures and practices.

²⁶ The relevant Articles in Chapter VIII of the UN Charter are Article 52 and 53. Article 52 (1) reads: “*Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the United Nations.*” Article 53 (1) reads: “*The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council (...)*”

²⁷ See Winrich Kühne, *Humanitäre NATO-Einsätze Ohne Mandat?: Ein Diskussionsbeitrag zur Fortentwicklung der UNO-Charta* (Ebenhausen, Stiftung Wissenschaft und Politik, AP3096, März 1999).

²⁸ See Michael E. Brown, “The Causes and Regional Dimensions of Internal Conflict,” in Michael E. Brown, ed., *The International Dimensions of Internal Conflict* (Cambridge, Mass.: MIT Press, 1996), pp. 590-599.

²⁹ The US and the UK defended such a right during the Kosovo crisis. In general, though, the US and European governments made weak legal cases when defending a right to unilateral humanitarian intervention. On the different positions of the NATO members see, for example, Serge Sur, “Les aspects juridiques de l’intervention des pays membres

de l'OTAN au Kosovo," *Revue de Defense Nationale*, December 1999, pp.44-62; Adam Roberts, "NATO's 'Humanitarian War' over Kosovo," *Survival*, Vol. 41, No.3, Autumn 1999, pp.102-123; and Catherine Guicherd, "International Law and the War in Kosovo," *Survival*, Vol.41, No.2, Summer 1999, pp. 19-34.

³⁰ See for example, Richard Lillich, "Kant and the Current Debate over Humanitarian Intervention, Vol. 6, *Journal of Transnational Law and Policy*, Nr. 397, 1997; Michael L. Burton, "Legalizing the Sublegal: A Proposal for Codifying a Doctrine of Unilateral Humanitarian Intervention, *Georgetown Law Journal*, Vol. 85 December 1996, pp.417-568; David J. Scheffer, "Toward A Modern Doctrine of Humanitarian Intervention," *University of Toledo Law Review*, Vol. 23, 1992, pp.252-293; Theodor Meron and Allan Rosas, "A Declaration of Minimum Humanitarian Standards," *American Journal of International Law*, Vol.85, 1991, pp.375-381. See also David J. Scheffer, "Challenges Confronting Collective Security: Humanitarian Intervention," in David J. Scheffer, Richard N. Gardner, and Gerald B. Helman, *Post-Gulf War Challenges to the UN Collective Security System: Three Views on the Issue of Humanitarian Intervention*. (Washington DC: United States Institute of Peace, June 1992), pp.11-13; John Norton Moore, "The Control of Foreign Intervention in Internal Conflict," *Virginia Journal of International Law*, Vol.9, 1969, p.264; and Richard B. Lillich, "Forcible Self-Help by States to Protect Human Rights," *Iowa Law Review*, Vol. 53, 1967, pp.347-351.

³¹ See Dan Smith, "Interventionist Dilemmas and Justice," in Anthony McDermott, ed., *Humanitarian Force* (Oslo: PRIO, 1997, PRIO Report No. 4. Published jointly with the Norwegian Institute for International Affairs).

³² Article 3 which is common to all Geneva Conventions reads as follows:

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanly, without any adverse distinction founded on race, colour, religion, or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.”

The international criminal tribunal for the former Yugoslavia was authorized to adjudicate: (1) grave breaches of the 1949 Geneva Conventions, such as willfully killing or causing great injury to wounded soldiers, prisoners of war, or civilians; torture; unlawful deportation; or taking civilians hostage; (2) violations of the laws or customs of war, such as wanton destruction of cities or villages; attacks on undefended civilian populations; and destruction of institutions dedicated to religion, charity or education; (3) genocide, defined as crimes committed with the intent of destroying in whole or in part a national, ethnic, racial, or religious group; (4) crimes against humanity, defined as inhumane acts such as murder, torture, or rape, committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. The Rwandan tribunal was authorized to adjudicate serious violations of humanitarian law in the latter two of these areas as well as violations of Article 3 of the Geneva Conventions. For the statutes of the tribunals see UNSC Res. 827 (1993) of May 25, 1993 and UNSC Res. 955 (1994) of November 8, 1994. The jurisdiction of the (permanent) International Criminal Court is “limited to the most serious crimes of concern to the international community as a whole.” The Court has jurisdiction with respect to the following crimes: crime of genocide; crimes against humanity; war crimes; and the crime of aggression.

³³ Several NGOs have argued that certain aspects of NATO’s bombing campaign were in violation of humanitarian law, in particular the choice of certain targets and the use of cluster bombs. See, for example, the US Human Rights Watch materials on www.hrw.org/hrw/campaigns/kosvo98.

³⁴ See Serge Sur, “Les aspects juridiques de l’intervention des pays membres de l’OTAN au Kosovo,” *Revue de Defense Nationale*, December 1999, pp.44-62; Sur considers an intervention by a group of states more desirable than intervention by a single state. Indeed, in the former case it is easier to defend against accusations that the intervention takes place out of self-interests and is mainly self-serving. Yet, this does not seem to be a condition that would make intervention more lawful.

³⁵ Couching this issue in terms of a weakening of state sovereignty is unhelpful and beside the point. Sovereignty has never been an absolute concept. Moreover, military intervention is increasingly used in situations where state institutions have collapsed and is most often aimed at non-state actors: international terrorists, small military groups, crime syndicates, or individuals advocating genocide. If the sovereignty and independence of states is at risk at the dawn of the 21st century it is because of globalization—economic interdependence and the information revolution—not military intervention by outside powers.

³⁶ See *Charter of the United Nations*, Articles 43, 46 and 47.

³⁷ On a UN Force see, for example, Brian Urquhart, “For a UN Volunteer Military Force,” *The New York Review of Books*, Vol. XL, No.11, pp.3-4. On peace enforcement units, see the proposal by

Boutros-Ghali in *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, A/47/277 or S/24111, June 17, 1992, para 44.

³⁸ See *The United Nations and Rwanda, 1993-1996* (New York: United Nations, Blue Book Series, Vol.X, 1996)

³⁹ See the *Annual Progress Report of the Secretary-General on Standby Arrangements for Peacekeeping*, and www.un.org/Depts/dpko.

⁴⁰ On October 22, 1999 the UN Security Council authorized the establishment of a mission in Sierra Leone (UNAMSIL) of up to 6,000 military personnel. See UNSC Res. 1270 (1999) of October 22, 1999. Troop strength was increased in February and May 2000 to respectively 11,100 and 13,000 soldiers. See UNSC Res. 1289 (2000) of February 7, 2000 and UNSC Res. 1299 (2000) of May 19, 2000. A UN Mission in the Republic of Congo following the Lusaka cease-fire of 10 July 1999 would require many thousands of troops. Although the cease-fire agreement provides for the deployment of UN soldiers, thus far the United Nations has only established an Observer Mission comprising 90 military observers. An advance group entered the country in November 1999. In February 2000 the United Nations Organization Mission in the Democratic Republic of Congo (MONUC) was authorized to deploy up to 5,537 military personnel. See UNSC Res. 1291 (2000) of February 24, 2000.

⁴¹ See Brian Urquhart, "Will the World Learn From the Debacle in East Timor," *The Boston Globe*, September 17, 1999.

⁴² Even for a limited operation such as *Operation Turquoise* in Rwanda, France had to hire heavy-lift air transport planes (Antonov An-124s) from Russia.

⁴³ See, for example, Richard Haass, *Intervention: The Use of American Force in The Post Cold War World* (Washington DC: Brookings Press, 1999); Richard Haass, *The Reluctant Sheriff: The United States After the Cold War*, (Washington DC: Brookings Press, 1997); Willam J. Durch, ed., *UN Peacekeeping, American Politics and the Uncivil Wars of the 1990s*, (New York: St. Martin's Press, 1996); Stanley Sloan, *The United*

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(Washington, DC: GPO, Report Prepared for the Committee on Foreign Affairs, US House of Representatives, August 1994, 103d Congress, 2d Session).

⁴⁴ See Chantal de Jonge Oudraat, “Bosnia,” in Donald C.F. Daniel and Bradd C. Hayes with Chantal de Jonge Oudraat, *Coercive Inducement and the Containment of International Crises* (Washington DC: USIP Press, 1999), pp.41-78.

⁴⁵ The US proposed to take the lead in Somalia on November 25, 1992. An US-led military operation (UNITAF) was authorized by the UN Security Council on December 3, 1992. One week later, UNITAF troops landed in Somalia. On May 4, 1993, the US handed over command of the operation in Somalia to the UN (UNOSOM II). On October 13, 1993, the US announced that it would withdraw all of its troops from Somalia by the end of March 1994. This doomed the international intervention in Somalia to failure. The last US troops left Somalia in March 1994. They would return briefly one year later, in March 1995, to extract the remaining UN troops from Somalia. Violent conflict in Somalia has persisted. See Donald C.F. Daniel and Bradd C. Hayes, “Somalia,” in Donald C.F. Daniel and Bradd C. Hayes, with Chantal de Jonge Oudraat, *Coercive Inducement and the Containment of International Crises* (Washington DC: USIP Press, 1999), pp. 79-112.

⁴⁶ See Chantal de Jonge Oudraat, “Haiti,” in Donald C.F. Daniel and Bradd C. Hayes with Chantal de Jonge Oudraat, *Coercive Inducement and the Containment of International Crises* (Washington DC: USIP Press, 1999), pp.41-78.

⁴⁷ See Ivo Daalder and Michael O’Hanlon, *Winning Ugly: NATO’s War to Save Kosovo*, (Washington DC: Brookings Press, 2000).

⁴⁸ It must also be noted that Nigeria and ECOMOG, contrary to the US and NATO, intervened upon requests of the sitting, albeit besieged, central governments.

⁴⁹ This was one of the lessons that the US military had learned during Vietnam. For details see, for example, Richard N. Haass, *Intervention: The Use of American Military Force in the Post Cold War World* (Washington DC: Carnegie Endowment for International Peace, 1994); and US Department of the Army, *Peace Operations* (Washington DC: GPO, Field Manual 100-23, 30 December 1994).

⁵⁰ The polls were carried out in 1995 by the Program on International Policy Attitudes at the University of Maryland. See Randolph Ryan, "Is the US Public Bolder Than Its Leaders?: Studies Suggest Americans Might Back Forceful Action To Stop Ethnic Cleansing," *The Boston Globe*, 23 July 1995. See also Sloan, *The United States and the Use of Force in the Post-Cold War World: Toward Self-Deterrence?*. The studies and surveys by the Triangle Institute for Security Studies were carried out in 1999. See Peter D. Feaver and Richard H. Kohn, *Project on the Gap Between the Military and Civil Society: Digest of Findings and Studies*, Presented at the Conference on the Military and Civilian Society, Cantigny Conference Center, 28-29 October 1999. (www.poli.duke.edu/civmil). See also Peter D. Feaver and Christopher Gelpi, "How Many Deaths Are Acceptable? A Surprising Answer," *Washington Post*, 7 November, 1999, p.B3.

⁵¹ The poll showed some remarkable discrepancies between the military elite, the civilian elite, and the mass public. Faced with the same question on the Congo, the military elite gave 284 and the civilian elite 484 as the number of acceptable deaths. For Iraq, the figures were: military elite 6,016; and the civilian elite 19,045. Finally, respondents were

asked how many American deaths would be acceptable to defend Taiwan against invasion by China. The military elite responded 17,425; the civilian elite 17,554; and the mass public 20,172. See Peter D. Feaver and Christopher Gelpi, "How Many Deaths Are Acceptable? A Surprising Answer," *Washington Post*, 7 November, 1999, p.B3.

⁵² See, for example, Frederick Forsyth, "Send in the Mercenaries," *Wall Street Journal*, May 15, 2000; Jonah Schulhofer-Wohl, "Should We Privatize The Peacekeeping?," *Washington Post*, May 12, 2000; and William Shawcross, "Send in the Mercenaries If Our Troops Won't Fight," *The Guardian*, May 10, 2000.

⁵³ For details, see David Shearer, *Private Armies and Military Intervention* (London: International Institute for Strategic Studies, 1998, Adelphi Paper 316); David Shearer, "Outsourcing War" *Foreign Policy*, Fall 1998, pp.68-81; Deborah Avant, *The Market for Force: Exploring the Privatization of Military services*, A Paper for the CFR Study Group on the Arms Trade and the Transnationalization of the Defense Industry: Economic versus Security Drivers, 1999; and Abdel-Fatau Musah and J. 'Kayode Fayemi, *Mercenaries: An African Security Dilemma* (London: Pluto Press, 2000). It may be noted that EO was outlawed in South Africa in 1998.

⁵⁴ However, after having spent 21 months in the country and enabled the sitting government to get the better of the Revolutionary United Front—RUF—EO's contract was terminated. This, of course, was one of the conditions of the RUF, who also refused the deployment of UN peacekeepers. The ensuing military vacuum led to continued fighting. In May 1997 a military coup took place, derailing all previous peace efforts. See David Shearer, *Private Armies and Military Intervention* (London: International Institute for Strategic Studies, 1998, Adelphi Paper 316).

⁵⁵ See, for example, James Rupert, “Diamond Hunters Fuel Africa’s Brutal Wars: In Sierra Leone, Mining Forms Trade Weapons and Money for Access to Gems,” *Washington Post*, 16 October 1999. Others have estimated that Sierra Leone loses between US \$ 200 to 300 million annually to illegal diamond trafficking. Most of this illegal trade passes through Liberia which since the mid-1990s has exported 31 million carats—more than 200 year’s worth of Liberia’s national capacity. See Douglas Farah, “Diamonds Are A Rebel’s Best Friend: Mining of Gems Helps Sierra Leone Militia Stall Peace Process,” *The Washington Post*, April 17, 2000; and Blaine Harden, “Africa’s Gems: Warfare’s Best Friend,” *The New York Times*, April 6, 2000.

⁵⁶ I recall that international criminal prosecution is a third instrument available to states. However, this instrument is not covered in this paper.

⁵⁷ For a more detailed development of these conditions see Chantal de Jonge Oudraat, “L’ONU, les conflits internes et le recours à la force armée,” *Annuaire Français de Relations Internationales 2000*, Vol.1 (Brussels: Brylant, 2000), pp.817-830; and Chantal de Jonge Oudraat, “Making Economic Sanctions Work,” in Chester A. Crocker, Fen Osler Hampson and Pamela Aall, eds., *Managing Global Chaos*, 2nd.ed. (Washington DC: USIP Press, 2001).

⁵⁸ This is in contrast with what happened in the 19th and 20th centuries. It also underscores the idea that the debate over intervention is perhaps not a debate over the decline of the sovereignty of the state, but rather a debate over how the state is reasserting its sovereignty.

⁵⁹ The launch in March 2000 by the UN Secretary-General of a major study on peace missions is in this regard encouraging, but should be multiplied.

⁶⁰ See, for example, the proposal by Michael L. Burton, “Legalizing the Sublegal: A Proposal for Codifying A Doctrine of Unilateral Intervention,” *Georgetown Law Journal*, December 1996, Vol. 85, pp.417-568.

⁶¹ It would entail progress on the membership question of the Council as well as moves on the veto. Both of which are unlikely in the near future.

⁶² This was a procedure first introduced by UN Secretary-General Boutros Boutros-Ghali. Unfortunately Kofi Annan has abandoned this practice.

⁶³ See Report of the UN Secretary-General, *The Fall of Srebrenica*, A/54/549, November 15, 1999; and *Report of the Independent Inquiry into the Actions of the UN During the 1994 Genocide in Rwanda*, December 15, 1999. Both reports are available at www.un.org.