

**MUSCULAR HUMANITARIANISM IN THE POST COLD WAR
ERA: DECODING THE DISCOURSE AND POLITICS OF
COERCIVE HUMANITARIAN INTERVENTIONS IN THE 1990s.**

Thesis submitted to the Goa University
for Award of the Degree of

DOCTOR OF PHILOSOPHY

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DECLARATION

I hereby declare that, the thesis entitled “**MUSCULAR HUMANITARIANISM IN THE POST COLD WAR ERA: DECODING THE DISCOURSE AND POLITICS OF COERCIVE HUMANITARIAN INTERVENTIONS IN THE 1990s**”, submitted by me for the award of the degree of Doctor of Philosophy of Goa University, is my own original work.

The Thesis has not been submitted for any other degree, either of this University, or of any other University.

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CERTIFICATE

This is to certify that the thesis work entitled, “**MUSCULAR HUMANITARIANISM IN THE POST COLD WAR ERA: DECODING THE DISCOURSE AND POLITICS OF COERCIVE HUMANITARIAN INTERVENTIONS IN THE 1990s**”, undertaken by the candidate **Mr. Dattesh Damodar Parulekar**, is a record of original research work done by the Research Scholar, during the period of study, and that it has not previously formed the basis, for the award to the Candidate, of any Degree, Diploma, or other similar titles, whether of this University, or any other University.

It is hereby recommended that, the Thesis be placed before the Examiners, for evaluation.

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Guide / Supervisor

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CONTENTS

<u>Sr. No.</u>	<u>CHAPTERS</u>	<u>Pg. Nos.</u>
	Glossary	
I	Introduction	1-13
II	Humanitarian Intervention – An Epistemological Analysis	14-53
III	Humanitarian Intervention: Theoretical Constructs and Normative Frames	54-126
IV	Sovereign National-Interests Calculus and the Praxis of Humanitarian Interventions	127-188
V	Militarized Humanitarian Interventions in a Changing Paradigm: Doctrinal Praxis of Responsibility to Protect	189-237
VI	Summary and Conclusion	238-244
	Bibliography	245-266
	Annexures a) UNSCR 688 – Iraq (5 th April 1991) b) UNSCR 794 – Somalia (03 rd December 1992) c) UNSCR 841 – Haiti (16 th June 1993) d) UNSCR 1160 – Kosovo (31 st March 1998) e) UNSCR 1199 – Kosovo (23 rd September 1998) f) UNSCR 1203 – Kosovo (24 th October 1998)	267-286

GLOSSARY

HLP/HLPR	High Level Panel / High Level Panel Report
ICISS	International Commission on Intervention and State Sovereignty
ICRC	International Committee of the Red Cross
IDP	Internally Displaced People
IHL	International Humanitarian Law
IICK	Independent International Commission on Kosovo
IWCT	International War Crimes Tribunal
JWT	Just War Theory
KLA	Kosovo Liberation Army
KVF	Kosovo Verification Mission
MSF	Médecins Sans Frontières
NATO	North Atlantic Treaty Organization
NFZ	No Fly Zone
NSA	National Security Adviser
OSCE	Organization for Security and Cooperation in Europe
PDD	Presidential Decision Directive
PRD	Presidential Review Directive
R2P	Responsibility to Protect
RSG	Report of the Secretary General
RSO	Regional Security Organization
RwP	Responsibility While Protecting
SACEUR	Supreme Allied Commander Europe
SHAPE	Supreme Headquarters Allied Powers Europe
SPLA/SPLM	Sudanese Peoples Liberation Army / Movement
UNGA	United Nations General Assembly
UNITAF	Unified Task Force
UNOSOM	United Nations Operations in Somalia
UNSC	United Nations Security Council
UNSG	United Nations Secretary General
UNSCR	United Nations Security Council Resolution
USAID	United States Agency for International Development
WSOD	World Summit Outcome Document

CHAPTER I

INTRODUCTION

The concept and phenomenon of Humanitarian Intervention, generically understood as external ingress into the domestic jurisdiction of a sovereign entity, with a view to mitigating or alleviating egregious human rights violations, perpetuated or perpetrated by virtue of complicity or delinquency of the statist dispensation, is neither nascent nor unique, yet, complex and contentious. If anything, the idea and its practice, enjoys antiquated antecedence, harking back to the annals of Christian theology propounded constellation of principles of ‘Just War’ of early centuries, evolving through the jurisprudential writings of Hugo Grotius and the ilk, amidst the hegemonic firmament of European imperial power politics, and enduring a progressively circumscribed course, within codified provisions of modern-day International Law, reposed, within the UN Charter.

Notwithstanding its long lineage, the ideation of humanitarian intervention and the delineation of its operative ambit remains contested, polarising opinions across intellectual circles and policy landscape. The dissension, stems essentially on the grounds that its potential acceptance and purported legitimisation, runs ostensible counter, to classical notions of justice-and-equality, tramples upon the inviolable sanctity of state-sovereignty, and vitiates systemic order, by being contrarian to the canonical non-interventionist rules based juridical framework. Extrapolating from this, it can veritably be averred, that the attempt to find a tangible and sustainable ‘use of force’ framework, in reassuring support of humanitarian protection, is anchored, in an intrinsic challenge. It melds the solidarist abstractions of ethical-moral impulses, with dynamically competing and pragmatically driven political dilemmas, and the rigid prescriptiveness of legal precepts. What accentuates matters is that, these attributes, invariably militate at cross-purposes, thereby rendering the task formidable, even verging on the prohibitive. Legitimising intervention, on existential humanitarian grounds, entails, reconciling the tensions between the primacies for state sovereignty on the one hand and upholding human rights and fundamental freedoms, on the other, through a workable dovetailing arrangement, that is still in consonance with the provisions of the UN Charter.

CHAPTER 1 RESEARCH DESIGN AND FRAMEWORK

The ardent and avowed scope of this research thesis is to examine the dynamics and mechanics, spurring apparent selectivity in the international community’s appropriating of

itself, to clarion-calls for existential humanitarian emancipation, in the immediate wake of the end of the Cold War structured arena of international politics. Consequently, it has endeavoured to query the scope, extent and cause-effect, which contribute to incompatibility, inconsistency and inchoateness characterising the dichotomous odyssey of Armed Humanitarian Interventions, spanning the turbulent decade of the 1990s.

Pursuantly, the dissertation determined the undergoing Research Objectives, to be interrogated:

1. How should the international community, address vexing imagery or distressing entreaties for effective humanitarian assistance, from innocent civilians, caught in the crosshairs of human-induced virulence, brought on by political dysfunction and institutional atrophy leading to state collapse, or owing to the spectre of the statist regime, turning on its subjects, in crass-case of repressive subjugation, threatening outright extermination?
2. Can the tenet of sovereign-state authority, fundamental to global peace and systemic order, be so inviolable and unfettered a privilege in scope, such as to accord statist regimes, a virtual carte-blanche of sovereign-immunity, to perpetrate or condone egregious hostilities against their defenceless populaces, within sovereign frontiers, without punitive restraint?

Premised and predicated upon the foregoing twin avenues of investigation, emerges, the trinity of Research Questions, which have been recurrently probed, within the thesis.

- 1) How does 'norm' and 'normative' Development, contribute, to the advent of a new humanitarian construct, in vogue, since the onset of Post-Cold War epoch?
- 2) What are the impacts of politically driven decision-making, inter-se, the premier global body (UN) and its most preponderant Member State (US), on the typology and attendant vagaries and vicissitudes of humanitarian interventions, during the upheavals of the 1990s?
- 3) Can the 'Responsibility-to-Protect' (R2P) over a 'Right-to-Intervene' (R2I) conceptual-operational doctrine, address and facilitate the amelioration of inevitably ostensible subjectivity, questionable legitimacy and controvertible agency, in pursuance of the conduct of less arbitrary and more consensual, muscular humanitarian interventions?

In terms of the Research Methodology at hand, the endeavour has plausibly enough, principally adopted a historical-analytical approach to erudition, founded in systematised processes of deriving from specific individualised Case Study evaluation, and engaging in comparative research across a set of common variables, coalescing these Case Studies. Besides, the research exercise brings to bear a dominant degree of secondary source material, complemented, by pertinent recourse to instructively epochal primary sources, and is also the benefactor of certain interviews, with key personalities shaping critical junctures of events, under consideration. Notwithstanding, the thesis is not without its requisite consultation of quantitative input, particularly in respect of data-points and data-sets, pertaining to transpiring of conflicts through the 1990s, gleaned from authoritative sources, such as annualised SIPRI Yearbooks and the Uppsala Conflict Research Centre's spectrum of publications, of course, corroboratively ascertained from UN data sources.

Within the overarching framework of the historical-analytical approach, the research thesis has embraced, a three-by-three (3x3) dimensional axis, for germane enquiry and requisite examination. The research trend-lines are segmented into a matrix, plotting *Functional Considerations* (sovereignty, human rights and the use of force), against *Systemic Impulses* (Quests for 'order' reflecting stability, 'justice' conflating with ethics, and 'security' in pursuance of peace); and impinged upon, by *Process Factors* ('politics' involving subjectivity, 'morality' that goes to the heart of legitimacy, and 'law' which exudes issues of authorized agency in intervention.)

The temporal scope of the erudite study is the decade of the 1990s, which, in many ways, stands widely surmised, as a flux and fluid 'bridge' period of sorts, straddling the end of the bipolar schemed cold war and the tectonic-transformation ushering new century. The epoch, which onset with the dawning of a new-fangled optimism, embodied in the averment of a proverbial 'New World Order' by President George H.W. Bush in 1991, had, by the turn of the century, amidst the empirical record of chequered and undulating instances of haphazard interventions and chilling non-interventions on humanitarian grounds, descended, into the sobering realisation, that the doctrine and practice of humanitarian intervention, as an underpinning instrument of conflict management and resolution, was far from consummated. In doing so, the 1990s, through its tempest, also embodies substantive inflexion-points and seminal pivot-situations, impinging on the configuration and shaping the trajectory of humanitarian interventions, of militarized nature, along a certain axes of enquiry and examination.

The decade of the 1990s is most instructive to any fleshed out understanding of the crest and troughs surrounding humanitarian interventions. Firstly, the period witnessed the dramatic mutation in the locus of conflict, transitioning from fiendish but arguably predictable inter-state hostilities to sneaky and messy intra-state warfare (SIPRI Yearbook 2000 and the Uppsala Conflict Data bears this facet out), for which the international order and more so the United Nations system, was least equipped to tend to. This notwithstanding, under the overhang of an ideologically delimited strategic environ, the period also coincided with the qualitative shift in the refreshing appreciation of humanitarianism. Such a shift is encapsulated, in the transition away from the symbolic provisioning of human rights protection through routine ritualistic enactment of global human rights instruments, towards the rigour of substantive mechanisms for enforcement of human rights, case-in-point being the instituting of UN mandated International War Crimes Tribunals (IWCTs) and the formalisation within International Humanitarian Law (IHL), of Internally Displaced Persons (IDPs), as being different and distinct, from conventionally known status of Refugees. Furthermore, the decade also stood testament, to a creative reappraisal of the remit of national interests, as perceived by states, wherein, hitherto matters of internal transpiring within domestic jurisdictions were no longer off-limits, to strategic consideration by the accosting neighbourhood, wider region, and across the globe. As human rights yields to human security with the corollary of human dignity and well-being in societal consciousness, the issues of civil wars brought on by sub-national asymmetric warfare, ethno-nationalist strife and pogrom, fragility of state structures leading to state failure and consequent collapse, threats to processes at democratisation and nation-building, all became legitimate matters, for consideration by the United Nations and its sovereign membership collective, under the widened gamut of threats to regional and global peace and security.

In terms of the criterion for selection of pertinent Case Studies, it entails mention that, the spatiality scope is global, as the quartet of cases span, the abidingly volatile Middle East (Northern Iraq 1990-91), the equally tormenting African continent (Somalia 1992-95), the experience from relatively left field, as in a surprising turn-up from a long quietened Europe (Serbia's Kosovo 1998-99), all the way to the lesser spoken about Americas (Haiti 1994-95). Each of these case studies, are uniquely dissimilar to each other, in the quintessential sui generis traditions of international politics, yet, they also partake in certain continuities, that provide for weaving a recurrent trend, building into a narrative. Each of the case studies involves a response mechanism, which initiates within the framework of the United Nations,

and for the most part is commandeered, under authority from the UNSC, with the singular exception, of the Serbian aggression within Kosovo. Despite this, the interventionist missions are differentiated across each of the cases under consideration, thereby manifesting the broader spectrum, of how deployment of militarized coercion can and was envisaged. This said, in each of the multilateral interventions, the United States was spearhead, thereby speaking to the criticality of the relationship, between the premier global body and its most preponderant Member-State, in fashioning potential muscular responses to humanitarian atavism.

Each of the case studies is an outlier in itself, and yet, when seen collectively, represent instances which have mainstreamed the humanitarian intervention approach during the 1990s. None of the cases can claim to constitute existential national interest for the international community, much less the intervention stewarding United States, and still can neither it be contended that the cases were wholly or singularly humanitarian in their calling card. If the Kurds, being repressed by Saddam's Baath regime and facing imminent extermination, posed a threat to regional stability through populace exodus; then, Somalia and its impending collapse, portended destabilising consequences for the epochal Horn of Africa subset. If the degenerative situation in impoverished Haiti imperilled a metastasizing humanitarian crisis on Washington's door-step; then Kosovo verged, on showing-up Europe and Western powers in sullied light of indifference. This reinforces the view obtained during the research that, even in apparent instances of humanitarian crises, there is the medley interplay of humanitarian induced motivations with the realistic pragmatic appraisal of whether it merits acting, which ensures the drive of major powers, from being simply impelled to actualisation by the international community.

- Northern Iraq (1990-91): Maiden instance where the United Nations asserted the considered plausibility of instrumentalizing coercive force vide multilateral intervention, to protect humanity within sovereign borders (UNSCR 688). Legitimated imposition of No-Fly Zones (NFZs), restricting sovereign air-space of the target sovereign, was a condition-precedent creating first.
- Somalia (1991-95): Maiden acceptance of the convolute phenomenon of complex humanitarian emergencies, as rationalizing the case for deployment of peace enforcement measures. Amidst the specter of unfolding state failure and virtual collapse, the UN's authorized its first attempt at nation-building (UNSCR 794).

- Haiti (1993-95): The United Nations commandeered collectivized intervention in the form of coercive enforcement measures, in unequivocal support of restoration of democracy, responding to impending orgy of refugee exodus, and terming it as undermining of Regional Security); again, a first of its kind.
- Kosovo (Serbia) (1998-99): The UN response to a brutal repression of a restive secessionist was stymied by the tyranny of the minority threshold of a VETO injunction, which led to the global body being circumvented for action undertaken through the auspices of NATO. Enjoyed subsequent retrospective legitimation of the action through a creative reading of Chapter VIII provisions of the UN Charter, notwithstanding the dialectic duality of legality vis-à-vis legitimacy of enforcement measures against sovereign impunity.

The triad of Research Hypotheses, formulated for the purpose, encapsulate the dimensions which are considered epochal, for a holistic understanding of what stoked the surging demand for muscular humanitarian interventions during the early to mid-1990s, and also dissipated the clamour, come the turn of the century, morphing into a new paradigmatic axis of thinking on the subject.

1. The infirmities in linear progression of conceptual development and the anodyne and chequered nature of statist practice surrounding humanitarian intervention, through the 1990s, makes the inherent subjectivity, weak legitimacy and specious agency, inevitable, in addressing catastrophic dossiers of savage humanitarian excess.
2. The actuality and efficacy of international response, to combatting state-induced or incapacitative internal violence, hinges, on the leadership of the politico-diplomatic proactivity of the most preponderant member-state, the United States, within the firmament of the United Nations.
3. Sovereign responsibility cast as ‘duty’, privileged over sovereign impunity, understood as vested ‘right’, contributes to developing a comprehensive doctrinal and operative framework, for attending to humanitarian atavism, in an empowering and emancipating hue

CHAPTER 2: HUMANITARIAN INTERVENTION – AN EPISTEMOLOGICAL ANALYSIS

This Chapter undertakes an examination of the conceptual contours, conditioning and governing the epistemological understanding of ‘humanitarian intervention’, as reflected, across the corpus of literature on the theme. It merits mention, that the idea and phenomenon

of humanitarian intervention, have historically lent themselves to a multitude of definitions, each pioneered and invoked, from the vantage-point of their respective frame of comprehension. Understandings range from the classical notions of observing humanitarian interventions, through the prism of Christian theologian Just War traditions, to the conventionally ordained notions of perceiving such interventions, through the narrow confines of humanitarian aid and relief agencies, dispensing succour and sustenance to distressed populaces, marooned by natural calamities. It further extends to instances of forking-out one's own nationals from a degenerating security environment, or in matters of intercession either individually or collectively, at the sovereign's behest. However, contemporaneous understanding has broadened to include, the more contentious, non-consent based typology of interventions, commandeered for purposes of humanitarian corral, involving the transgression of axiomatically conceived sovereignty, and implying unprecedented imposed accountability on the target dispensation, which is either complicit or delinquent, in the transaction of humanitarian excess.

The Chapter delineates the various strands that encompass a holistic definition of humanitarian intervention, amidst the view that the nomenclature itself is an oxymoron in terms of how coercion and muscular resort to armed force, in particular, can constitute humanitarianism and intervention, being seen as lawful and legitimate. The approach of Oliver Ramsbotham towards arguing for a comprehensive reconceptualization of the term 'humanitarian intervention', is studied and found to be the most consensual and palatable, in coming to terms with the foundational reworking of the six elements, that segues into an understanding of humanitarian intervention, whether it be called coercive, forcible, muscular, armed, or whatever else. Conformist conceptions of the nomenclature have placed restrictions on its understanding, in respect of the 'purpose' of such intervention, which pits motives against interests. The 'agency' of such intervention, juxtaposes interpretations of Art 2(7) with Peace Enforcement action under Chapter VII of the UN Charter. The notion of 'target state' ranges the straddle of the legitimate state and threshold for consent against sovereignty based stipulations mentioned under Art 2(4) of the UN Charter. Considerations of 'force level', frames the discussion in terms of intervention, distinguished from war and wedged from non-forcible humanitarian intervention, while issues of 'context' conventionally are banally understood as legitimising humanitarian intervention deployed against tyrannical governments but requiring to come to terms with non-governmental forms of human rights violations too. Finally, the component of 'legitimacy' contends, with a sweeping broad-brush

pronouncement of any and all sovereign intervention from the outside, as illegal, while circumstances would demand that sovereign external intervention be held to a high standard of determination, before adjudication of legality or legitimacy.

Definitional understanding of humanitarian intervention is incomplete, without examination of the associated terminologies of human rights and sovereignty. While classical description of human rights, as often been conflated with the rights of the individual, humanitarian interventions are undertaken to safeguard the collectivised aggregated rights of human society, hence, the imperative for an initiation into what is it that elevates the individualised rights of humans to the collectivised rights of society, that make violations uncondonable. In similar vein, state sovereignty has been equated in common parlance, as exclusive jurisdiction from non-intervention in internal affairs and the unfettered authority to remain free from interference. Yet, the changing characterisation has it that sovereignty is infructuous without demonstrated internal legitimacy, specifically inviting humanitarian intervention, to restore back the social contract of governance between the governed and the governing, where primordial responsibility is to ensure, the welfare of one's own citizenry.

The Chapter leaves its exercise richer, in a deeper comprehension of the multiple dimensions to varied nomenclatures and terminologies, internalised, from perspectives of politics and law, alike.

CHAPTER 3: HUMANITARIAN INTERVENTION – THEORETICAL CONSTRUCTS AND NORMATIVE FRAMES

Humanitarian Interventions, at their intrinsic core, in conceptual and operational terms, inhabit the tri-junction realm of the moral universe of ethical milieu, and the impulses so engendered; the dynamic transactional competition between ends and means, defining perceived and veritable outcomes in political choices and consequent decision-making; and the overbearing overhang of enjoining precepts within codified international law. Hence, any discourse on the doctrinal and/or operative dimensions of deriving a legitimised and sustainable framework for humanitarian intervention, has to obtain, from the interplay of them. This said, from a theoretical constructs standpoint, Humanitarian Intervention situates at the intersection of Realist and Liberalist strands of ideation, in a manner, that juxtaposes the quotient of power and the material interests of states, with the duties and responsibilities of addressing human rights and upholding sovereignty.

With the rising tide of humanitarian induced military actions in the immediate wake of the end of the Cold War, the pertinently burgeoning literature on the subject also aligned itself along the course of long espoused relationships, between state sovereignty and human rights, politics and ethics, and peace and justice, leading to a discernible metamorphosis from the primacy of non-intervention to foraging for a framework for legitimate intervention, which can be concurred upon. Similarly, the thrust of literature on humanitarian intervention, for the most part, is driven by events and policy debates, rather than by theoretical arguments. Is it legitimate to intervene with force to protect people and keep them alive? If it is, what is the threshold for intervention? Who should intervene? How can such interventions succeed and what can go wrong? Answers to these questions are firmly grounded in enduring intellectual positions on moral obligation, international law, state sovereignty, and human rights. They run the gamut from stringent proscription on intervention to being cogent votaries for action.

The study finds that, as the draw-down of the Cold War binary played out, it coincided with a directional thrust in favour of natural law arguments and a latent Cosmopolitan belief, anchored in the universality of moral principles and rights. Can the attribute of sovereignty, impute states into a spectre, where they are above and beyond, any and all scrutiny of their actions, within sovereign borders? Can there not be a refined and nuanced hiving of requirements for legality but also thresholds for legitimacy, in respect of sovereign actions mounted externally? Should states acting to forestall or mitigate humanitarian excesses, be hauled over the coals for responding, or could their actions be put through the sieve of an exacting standard for gleaning veritable motive? Such plausible questions have headlined the rising tide of humanitarian interventions and also defined the axes of theoretical debate and normative framework of analysis, assessed in the course of study.

The thesis concludes that much of the work across theory and normative development pits the intellectual and policy communities, into three domains of mutual exclusivity and overlap. Votaries of humanitarian intervention, advance the cause of such action through the Constructivist lens of decoding state behaviour, rather than assuming it to be a fait-accomplish. The argument holds that, as the international system devolves, norms evolve, and exert changes in states demeanour, and in turn, the organically changing nature of state disposition, equally impinges upon and mutates, the very norms in existence. The UN mandated coercive interventions in Northern Iraq (1991), Somalia (1992-94), Haiti (1993-1994) and the circumvented intervention in Serbian Kosovo, are each salutary, in that they speak eloquently

and volubly to the demonstrable advancement of the norm of human solidarity, impelling sovereign states to appropriate themselves, in actionable and actualised ways.

The Constructivist explanation is further reinforced, by the historicity of the Solidarity School of theorizing that extrapolates from the notions of an international society, wedded in common values, all through to the cosmopolitan thought, that refutes non-intervention and its spooky concerns, in favour of forceful intervention to shield innocent civilians, predicated on overriding moral concern. Even an understanding of justice stands refined, by pointing as much to the ethicality required of states whilst exercising internal legitimacy, as is expected by them and the system, of peer sovereigns upholding external legitimacy through exclusive non-intervention, finding causality in it. In similar vein, realism which undergirds any and every sovereign state's propositioning and calculus, cannot accommodate for states turning vicariously humanitarian or quixotic in such matters, however, the development of the scientific realism variant within realism, has allowed the latitude to re-imagine national interests of sovereign states anew, within the concourse of circumstances, that no longer allows for the liberty and luxury of neatly defining the internal and external ramifications to national interest. The undertaken research has sought to probe the trend-lines rationalising humanitarian intervention, across its hits and misses, with these two avenues, viz., Social Constructivism and Scientific Realism.

The Chapter finds that all four interventions bear out the belief that 'Identity' has been a key stimulant to state actions in favour of advancing humanitarian norms and standing up for human rights, thereby speaking to the eminent role that constructivism plays, in offering meaningful explanations. However, the idea of states deploying to foreign lands, to the total exclusion of pragmatic considerations, is a misnomer, hence, affording sufficing interpretations to sovereign state intervention through the lens of scientific realist strand, which emphasizes a broadened conception of national interests, based on indivisible security, rationalising attendant actions.

CHAPTER 4: SOVEREIGN NATIONAL INTERESTS CALCULUS AND PRAXIS OF HUMANITARIAN INTERVENTION

The act of intervention, most notably by military means, in an unfamiliar strategic environment, is not a facile decision. If anything, it marks a momentous milestone in the foreign policy and diplomatic annals of any major power and hence, is undertaken, after due diligence and processing of myriad factors, influencing such intervention. This Chapter draws

on each of the quartet of Case Studies chosen for examination, and puts them under the microscope in decoding the factors impinging on US foreign policy and national security and politico-diplomatic decision-making within the United Nations Security Council, that motivated humanitarian interventions. The US is famed for being wary of expansive interventionist missions, and is often buffeted with a thin sliver of appetite to sustain military operations, more particularly boots-on-the-ground, in adversarial situations fraught with risk. The vagaries and vicissitudes within American political decision-making, has been a critical underpinning to how UN mandated and circumvented humanitarian interventions have shaped up in terms of their fallibility and efficaciousness, alike.

The Chapter delves into detail in analysing the prescriptive suggestions for calibrated US policy formulation in such matters, embodied in the Powell-Weinberger Doctrine that originated during the late 1980s and the subsequent Presidential Directive (PDD) 25 that governed matters during the Somalia crisis responded intervention. In similar vein, there is sound reason to explore other factors and actors bringing pressure to bear, such as Jokobsen's thesis of the 'Media (CNN) Effect', that impelled President Bush to indulge in Somalia and for Clinton to continue pursuit of the policy, before the same CNN Effect worked to the contrary during the unsavoury brutality of Black Hawk Down episode. This said, the Chapter has also evaluated the viability of the logic of moral hazard, which does impact foreign policies of powers, by virtue of drawing them into a certain conflict, on account of the hyped amplification of the humanitarian threat or crisis on hand, by the weaker protagonist in the conflict.

The Chapter, through vivid narration of empirical anecdotal evidence, validates the hypothesis that an intimate US role is almost a sine qua non for the UN to deliver on humanitarian interventions. While this reality is stark, it's also a case of poisoned chalice as the global body is stuck with conceding to certain demands made by Washington about operations control of such missions, which makes these missions a handmaiden to furtive US national interests, such as specific instances of regime change. Yet, when these US stratagems go awry, Washington is notoriously famous to cut and run, leaving the broader multilateral mission, holding the wet end of the wedge and virtually unravelling. This observation is backed-up by the dint of perceived record, wherein, in each of Northern Iraq (1990-91), Somalia (1991-94) and Haiti (1991-94), the missions proved to momentarily reactionary, without proffering them enduring solutions, out of their vexatious spectres. Such an approach to research, allows for critically evaluating the limits of Realism and moderates the

exceptionalism of a liberal-peace agenda, by focussing on the immutability of identity based foreign policy actions, marked by shared collective expectations of appropriateness.

CHAPTER 5: MILITARISED HUMANITARIAN INTERVENTION IN A CHANGING PARADIGM – DOCTRINAL PRAXIS OF RESPONSIBILITY TO PROTECT (R2P)

Amidst the humdrum of controversy filled Interventions undertaken during the decade of the 1990s, which were characterised by questionable principles of fairness and objectivity, genuine commitment to sustainability, propensity to advance collateral interest under guise, and the proclivity to overreach for actions, outside of authority from the UNSC, came the desire to frame a new initiative that would reconcile the inherent contradictions between upholding state sovereignty and human rights. This initiative, the basis of which was set in the seminal Report produced by the blue ribbon International Commission for Intervention and State Sovereignty (ICISS), in 2001, effected four significant contributions towards mitigating the gap wedging legality and legitimacy of Intervention. Firstly, it shifted the lingua of intervention, transitioning from a seemingly patronizing ‘Right to Intervene’ to the chastened ‘Responsibility to Protect.’ This has served to allay developing countries apprehensions about the clandestine agendas of the major powers, availing of this measure to effect regime change. Secondly, it fostered a new manner of articulating the attribute of Sovereignty, by prioritizing security considerations and putting a premium on the significance of human rights issues, couching the Sovereign character within twin features of internal obligation and external duty, in sequential mode. Thirdly, the ICISS stole a march on earlier constructs of humanitarian intervention, by disabusing the notion of it continuing to be solely about military intervention, and pointing out the doctrine’s relevant attempts at prevention, reaction, and rebuilding. Lastly, palatable determination criterion and consonant rules of engagement for military intervention, based on the guidelines of the Just War theory of international law, were emphasized.

Despite this, none of the momentous milestones in the R2Ps adoption as an idea and practice, be it the ICISS Report of 2001, the High Level Panel Report in 2004, the 2005 World Summit Outcome Document and the 2009 UN Secretary General’s Report on Implementation of R2P, contributed to its institution as a norm of binding international law, amidst scepticism that ranged from its perception as an extension of preceding humanitarian intervention, and its failure to decry its recourse, outside of the UNSC decision-making and

authorization framework. The Chapter has examined the various dimensions of what makes Responsibility to Protect, a paradigmatic shift in thought-process towards making interventions more consensual and legitimate, even outlining proposals that stress on the prevention and target-state capacitation aspects, hopefully leading to lesser acrimony, greater trust and efficiency in implementation.

CHAPTER 6: CONCLUSION AND RECOMMENDATIONS

The proponents of R2P have fervently hoped that the doctrine would codify the obligations of powers in the extant in pursuance of Intervention, through non-military means in most cases, but through punitive force wherever mandated, by the unfolding concourse of circumstances. Consequently, there has been merit in construing that, the R2P concept is reposed of the potential to progressively supplant humanitarian intervention, during the course of the century. However, in light of the fact that whenever R2P is tangibly applied, it requires decisive force to not simply put paid to the confronted humanitarian situation, but to act, in redress of the situation, such that there is no recrudescence. It's this fact that implies, that owing to feverish political contestation about whether it is war by other means, its standing remains incumbent upon carving-up adjustments, forging compromises, constricting its interpretation, imparting clearer definitions, measuring-up to expectations all in a bid to soliciting greater traction as an organising principle, ordering humanitarianism and its corresponding response. In the interlude, it's fair to conclude that, the idea suffers from dearth of support, to become an enforceable norm within international law, and is more in the nature of a political buzzword.

This concluding Chapter of the thesis in conclusion, puts the spotlight on how the Responsibility to Protect doctrine is shaping-up, in light of the experiences surrounding humanitarian interventions of the 1990s. The uneven application of R2P to situations in Syria and Libya, coupled with the manner by which Libya dossier was prosecuted and the ensuing fallout, has sullied the credence of R2P. Since its application rests on purveyance through the UN System, although it does not expressly outlaw actions outside its bounds, the R2P principle and doctrine has continued to be a victim of the UN's quirky way of functioning, where Security Council Resolutions in an attempt to be all things to all stakeholders, end up being diluted, watered-down texts of common minimum denominator of concurrence, than being a highest common threshold of convergence and compact.

CHAPTER 2

HUMANITARIAN INTERVENTION – AN EPISTEMOLOGICAL ANALYSIS

Karl Deutsch, in a primer to Philip Quincy Wright's *Study of War* (1965), famously averred, that for War to be abolished, it must be understood, and for it to be understood, it ought to be studied.¹ One can't help feel that, a similar sentiment pervades the scrutiny of the realm, of what has come to be known as 'Humanitarian Intervention'. At cursory glance, the nomenclature of 'Humanitarian Intervention' comes across, as a paradoxical oxymoron of sorts, with some characterising it as colourfully as "stupid oxymoron" and "unbridgeable oxymoron" too. Such description is brought-on, by the ostensible semantic incompatibility of the two independent terms 'humanitarian' and 'intervention', which, despite their longstanding anecdotal empiricism, were not established in common parlance and entrenched in popular discourse, yet, nevertheless often availed, in convenient amalgamation.² Humanitarianism has invariably been associated with actionable matters, benign, beneficent, and empathetic; hence consequently perceived and visualised, through the inevitable prism of militating 'Humanitarian Assistance', which proffers succour and sustenance to marooned and destitute populaces. In stark contrast, Interventionism, regardless of the genuineness, nobility, or otherwise of its motivations, invokes a naturally attributed sense of aggressive involvement into a certain situation, and is suggestive of action, that endeavours to purposefully alter the circumstances, prior to and at the time of such an Intervention; hence, often carrying the moniker of 'War', notwithstanding the tiered gradations inherent, in such an exercise of the Use of Force.

With the terminology entering much vogue since the end of the Cold War and through the 21st century, there has been a propensity, within the academic corpus of literature, to rightfully distinguish the contemporaneous comprehension of Humanitarian Interventions, from the largely non-controversial and wide-consensus operations of the International Committee of the Red Cross (ICRC) and Medicines Sans Frontier (MSF). However, in doing so, there has been veritable disservice, in swinging to the other extreme, by defining Humanitarian Interventions as 'Armed' Humanitarian Interventions (AHIs) or Humanitarian 'Militarised' Interventions (HMIs) or 'Humanitarian War' per se, which, rather than

¹Karl W. Deutsch, 'Quincy Wright's Contribution to the Study of War', *Journal of Conflict Resolution*, vol. 14, no. 4, 1970, p. 474.

²Robert Keohane, 'Introduction', in J.L. Holzgrefe and Robert O. Keohane (eds.), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (New York: Cambridge University Press, 2003), p.1.

clarifying the conceptual parameters and contours, has added grist-to-the-mill to perceptions, which presupposes modern-day Humanitarian Interventions, as a sweeping one-trick-pony instrumentality, of brute, buccaneering military force, in pursuance of ostensibly humanitarian-impelling rationale.

There is a further need to distinguish muscular or coercive humanitarian intervention from humanitarian assistance, since the distinction exists, in terms of their origins, applicable law, state practice, and the practice of international organizations, too. Humanitarian intervention raises qualms, whereas appreciation gravitates, the way of humanitarian assistance. Notwithstanding contestations, whilst the former remains an antiquated concept, the latter came into currency and vogue during the twentieth century. This said, despite its late ingress into international jurisprudence, the concept of humanitarian assistance has acquired the status of a customary norm of international law, backed-up by both *opiniojuris* and state practice to boot. The *opiniojuris* of states may be gleaned, from their acceptance of various obligations under the rubric of the United Nations Charter. It is a duty of all member states to extend all assistance to the United Nations (Article 2(5)), in the fulfilment of the Organization's objectives and purposes, including the promotion of international cooperation, in resolving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging of respect for human rights and for fundamental freedoms, sans discrimination.

The purpose of international cooperation (Article 1(3)), finds extension in the principle of assistance (Article 2(5)), and both of them find extension in Article 49, which lays down the Members' obligation of mutual assistance, and also in Article 56, whereby they pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55, including the promotion of human rights and solutions of international economic, social, health, and related problems. Besides these provisions in the U.N. Charter, there has always been an unwritten law, which measures a nation's civilizational stature, by the yardstick of its humanitarian assistance to those marooned. As for state practice of humanitarian assistance, there have been innumerable cases, where most countries have responded to calls for such assistance, invariably done on an ad hoc basis and through assessed contributions and voluntary donations, to the regular and supplementary budgets of various international organizations, which provide relief and assistance to demographic constituencies and populace segments, in distress. In fact, the concept of burden-sharing, which has gained ground in the context of humanitarian assistance

to refugees in particular, is an extension of the duty to extend humanitarian assistance. Even before the adoption of U.N. Security Council Resolution 688 (1991) on Iraq and UNSC Resolution 733 (1992) on Somalia, various states provided different forms of humanitarian assistance.

By contrast, the practice of states in intervening through the instrumentality of armed measures, on humanitarian grounds, has been so haphazard, parochial, and controversial, that, it can neither engender nor claim to procreate a customary norm of humanitarian intervention. This lacuna is strikingly borne out by the fact that, whenever states have carried out a humanitarian intervention, they did so, not because they felt a sense of juridical obligation, but because they sensed it convenient and desirable to undertake, thereby asserting the dearth of *opinio juris* (legally ordained state conduct and practice), in favour of unilateral humanitarian intervention.

DEFINING ‘HUMANITARIAN INTERVENTION’

Given the highly debated and contested nature of the terms ‘Humanitarian’ and ‘Intervention’, arriving at a consensual definition of Humanitarian Intervention, which embraces the most holistic of perspectives, is formidable, and seldom free from being controverted. What’s more, the definitional impreciseness and conceptual nebulosity, in the nomenclature and vent of Humanitarian Intervention, is compounded, by the dint of a wide swathe of scholars, approaching it, from their own respective disciplinary vantage-points, given that the phenomenon plausibly permeates, the standpoints of international relations, political science, legal studies, history, sociology, philosophy, and beyond.

While appraising different characterisations of Humanitarian Intervention, which appreciate the eclectic components, constituting such formulations, it’s nevertheless incumbent, to arrive at an operationally acceptable comprehension. Adam Roberts defines humanitarian intervention as a “military intervention in a state, without the approval of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants.”³ For Tonny Knudsen, humanitarian intervention is “dictatorial or coercive interference in the sphere of jurisdiction of a sovereign state motivated or legitimated by

³Adam Roberts, ‘Humanitarian War: Military Intervention and Human Rights’, *International Affairs*, vol. 69, no. 3, 1993, p. 426.

⁴Tonny B. Knudsen, ‘Humanitarian Intervention Revisited: Post-Cold War Responses to Classical Problems’, in Michael Pugh (ed.), *The United Nations, Peace and Force* (London: Frank Cass, 1997), p. 146.

humanitarian concerns.”⁴ According to Martha Finnemore, steeped in the predomination of norms-based and norms-induced construct, humanitarian intervention is a “military intervention with the goal of protecting the lives and welfare of foreign civilians.”⁵ In the solidarist words of Bhiku Parekh, influenced, by considerations of compassionate and empathetic kinship and feeling of brethren-camaraderie, humanitarian intervention is “an act of intervention in the internal affairs of another country with a view to ending the physical suffering caused by the disintegrations or gross misuse of authority of the state, and helping create conditions in which a viable structure of civil authority can emerge.”⁶ In the humanitarian-ness heady words of WilVerwey, it is construed “as referring, only to coercive action taken by states, at their initiative, and involving the use of armed force, for the purpose of preventing or putting a halt, to serious and wide-scale violations of fundamental human rights, in particular the right to life, inside the territory of another state.”⁷ With his unique moralist emphasis, Terry Nardin states that “humanitarian intervention is “the use of force by a state that aims to protect innocent people, who are nationals of another state, from harm, inflicted or allowed by that state’s government.”⁸ Fernando Teson, for his part, defines it as “the proportionate trans-boundary help, including forcible help, provided by governments, to the individuals in another state, who are being denied basic human rights, and who themselves, would be rationally willing to revolt, against their oppressive government.”⁹ In the formulation of Jennifer Welsh, “humanitarian intervention is coercive interference, in the internal affairs of a state, involving the use of armed force, with the purposes of addressing massive human rights violations or preventing human suffering.”¹⁰

Notwithstanding the constellation of dimensions, a pithily put construction of Humanitarian Intervention, emerges, as the threat or use of force, across state borders, by a

⁵Martha Finnemore, ‘Constructing Norms of Humanitarian Intervention’, in Peter Z. Katzenstein (ed.), *The Culture of National Security: Norms and Identities in World Politics*, (New York: Columbia University Press, 1996), p. 154.

⁶Bhiku Parekh, ‘Rethinking Humanitarian Intervention’, in Jan NederveenPieterse (ed.), *World Orders in the Making*, (London: Macmillan Press Ltd, 1998), p. 147.

⁷WilVerwey, ‘Humanitarian Intervention in the 1990s and Beyond: An International Law Perspective’ in Pieterse (ed.), *World Orders in the Making*, (London: Macmillan Press Ltd, 1998), p.180.

⁸Terry Nardin, ‘Introduction’, in Terry Nardin and Melissa Williams (eds.), *Humanitarian Intervention*, (New York: New York University Press, 2006), p. 9.

⁹Fernando Teson, ‘Collective Humanitarian Intervention’, *Michigan Journal of International Law*, vol. 17, no. 323, 1996, p. 325.

¹⁰Jennifer Welsh, ‘Introduction’, in Jennifer Welsh (ed.), *Humanitarian Intervention and International Relations*, (New York: Oxford University Press, 2004), p. 3.

state or group of states, through legitimate mechanisms, aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals, other than its own citizens, without the permission of the state, within whose territory, such force is applied. Enshrined in this definition, are a quadrilateral set of strands, which go to the heart of the (a) impulse (b) content (c) agency and (d) implication elements, of coming to grips with the content and implications of humanitarian interventions, thereby distinguishing an optimally legitimised intervention, from contender and pretender actions, in a concourse of circumstances routinely dynamic, and therefore not amenable, to developing a strict grouping of identifying criteria. Such strands, when elaborated, pertain and conform to the (1) Gross and systematised violations of human rights; (2) Credible robust threat or actualised deployment of military force; (3) Authority from legitimising institutions; and (4) Sovereignty and its transgression, respectively. This said, even as it excludes instances of dispense of humanitarian relief and rehabilitation assistance, the epistemological consideration further purposefully, puts beyond the pale, two types of interventionist disposition viz., the non-forcible interventions, as in the threat or use of punitive economic, diplomatic, or other forms of embargoing actions; and forcible interventions, aimed at protecting or rescuing the intervening state's own nationals, from the throes. While none gainsay the legality or morality of these other types of interventions, as either being desultory or non-epochal, yet, qualms persist, on whether interventions undertaken to rescue one's own nationals, may either be as urgent or contentious, as shielding innocent civilians within the state, from the depredations of violence.

The first strand, that enables a contemporary conceptual rationalisation of humanitarian interventions, is to perceive it, as a much-vaunted and arguably requisite punitive response-mechanism, to situations that represent a "gross and systematised violation of human rights." There is little gainsaying that dossiers of gross and systematised infractions of the human rights of innocent citizenry should and does constitute the *casus-belli* for appropriating humanitarian interventions, however, the formidability arises from the methodology of defining the preciseness of "gross" and "systematised", in popular perception and consciousness, such that it comes across as reasonable parameter, and not an exaggerated stretch to incredulity. There is a proclivity to construe and conflate "gross" with mass numbers or certain popular parlance embraced quantifiable thresholds, yet, such an artificial plane would do much disservice in letting many an abuse of human rights of innocent

individuals pass through the sieve, for ostensibly not rising up to the measure, etched in the mind.

After all, cases such as the mowing-down of eight thousand Bosnian men and boys by Bosnian Serb Commander Ratko Mladic in the audacity of broad daylight and temerity of full public glare of international media, over three macabre days in Srebrenica in 1995, was in numbers a small fraction of the human toll exerted by the five year ethno-religious bloodletting in the former Yugoslavia. Yet, it was so dastardly gross, so as to cause a pivot in the international community's response to the conflict, which went from calibrated military presence, to a punitive air campaign, which ultimately led to the Dayton Peace Process, in Ohio. In juxtaposition, is the ethnic pogrom in Rwanda, that saw eight hundred thousand civilians slaughtered by rival Hutu and Tutsi militias, across a span of one hundred days, in 1994, whilst the global comity of nations at the UN, in particular the big powers (P5), watched idly and balked and dithered, until, the ramifications of the grossness of what had transpired on their comatose watch, dawned, and roused them into albeit belated conflict mitigation and resolution action. It's clear that contextualised to the vile quality of what befalls, that eight thousand deaths can spark outrage, which eight hundred thousand may not, at least at the outset; hence, it's never about a magic number or a silver-bullet ballpark figure, but more in the realm of back-of-the-envelope intuitive assessments, of the gravity on hand or soon to metastasize. Of course, qualms are similarly adduced, as to the means for determining the "systematised" nature of human rights infringements, given the loaded connotations inherent in them and their usage, not to mention the quite possible susceptibility of such characterisations at the altar of hegemony of the sovereign powers-that-be. Should one look for certain instructive patterns and trends, either observable or discernible, to arrive at a conclusive determination?

Besides, there are those who also disparage the description of situations as systematic, on the grounds that it could precipitate a slippery slope, resulting in sweeping and indiscriminate interventions, borne of a form of missionary zeal to desiccate the globe, of not just hideous intent, but all-and-sundry unsavoury phenomenon, or even for that matter, setting-in-motion a condition-precedent, that could end-up, being more permissive than restraining, which ought to be the canonical rule for any such ambiguous mechanism, developed on the dial. Yet, empirical evidence points to the contrary, where humanitarian interventions materialise or are invoked, invariably, in situations of egregious violations, rather than be subjected to indiscriminate instrumentation, on fleeting flimsy grounds, given

the fact that deploying one's national force in treacherous terrains, with no apparently tangible national interest to be accomplished, is not something that sovereign-states, are particularly enthused or keen about. When the regime of Saddam Hussein was observed to be pursuing the hapless defenceless Kurdish minority in Northern Iraq, as a sequel to the precursor Iraqi war of aggression upon Kuwait, in 1991, the US-led international coalition, under arguable mandate from the UN Security Council, did not proceed on a whim or capricious impulse, much less, on an excursion in military adventurism. To the contrary, they did so on the evidence of past practice of the authoritarian military ruler, who had unleashed collective punishment via chemical gas on the Kurdish minority in Halabjah in 1987, as comeuppance for an alleged assassination bid on him, that was traced back to certain Kurdish individuals.

In similar vein, in famine-ravaged, insurrection-scarred and strife-torn Somalia, the intervention, spanning three UN mandated multinational military missions during 1992-95, came to town, impelled by the searing images of gaunt emaciated Somali people, and anecdotal tales of what could befall this clannish country, if left to fend for itself of its own devices. The country was being torn-asunder by ravenous tribes and militias, seeking to appropriate the country to themselves and practicing acts such as using food as an instrument of war against populaces of other ethnicities, besides attempts at sabotaging humanitarian relief convoys, etc., in the absence of a federal authority, due to an imploded regime, and disappearance of the ruler SiadBarre. In contrast, the NATO air based intervention into Serbia's Kosovo putsch was a classic interceding into a spectre, where disproportionate military measures of a genocidal and ethnic cleansing hue were being perpetrated upon the people of a particular province, courting independence, albeit, with some elements within the Kosovars, resorting to low-level asymmetric violent reprisals, in self-resistance. Hence, systematised may be gleaned to mean, any and all manifestations of institutionalised or serially committed persecutions of civilians, whether frontally or as by-product of multi-pronged conflagrations in conflict.

Here, it's instructive to note that, the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, did lay down the marker, for what could constitute an intolerable and un-condonable benchmark of human rights atavism. However, given that the scope and hue of human rights assailment has come a long way since, it behoves an expansion of the threshold, as to what and which acts tantamount to human rights contretemps. Quite clearly, anything that encroaches upon the human individual's right to life, adequate survival and modicum of sustenance, and primordial considerations of dignified existence, has to

encompass the ambit of what should and would in all reasonability constitute human rights violations. Despite the existence of the Genocide Convention, sovereign states have tended to be squeamish, about either calling out the perpetrators or even in designating such spectres as such, due to the duties and obligations it would reflexively impose upon them, to operatively uphold the provisions and tenets of the hortative and suasion-driven Convention.¹¹ Hence, in the post-Cold War era, during which the clarion call for coercive (muscular) humanitarian interventions arose, the conceptual discourse has sought to broaden the remit by speaking to a wider spectrum of instances involving ethnic cleansing, torture, mass atrocities and crimes against humanity, bracketed within the catchment phrase of “complex humanitarian emergencies.”¹²

The imperative to transcend the Genocide Convention and embrace other forms of occurring and recurring acts of brutalisation, are induced by the allegedly restrictive narrow confines of the Genocide framework, whose circumscription fails to appreciate or capture the no less epochal aspects of ambushing putsches on civilian centres, vitiating interference with the transmission of humanitarian assistance. Even attacks upon non-protagonists of war, such as the medics and allied personnel of the ICRC, MSF, and the ilk, not to mention civilians in the crosshairs of conflict, as also the blatant incapacity of the state or the dispensation at the helm, to deal with the degeneration, whether it be incompetence or complicity, seem removed from the purview of the Convention and its regime.

The conceptualisation of rudimentary human rights of citizenry warranting an intervention, must also account for facets that reinforce or buttress fledgling conditions, imperilling the defence of basic human rights.¹³ For instance, in Western Hemisphere’s arguably most impoverished tiny country of Haiti, the human rights of innocent Haitians stood visibly compromised, in 1994-95, due to the flagrant and brazen usurpation of power by the General Raul Cedras led military junta, which annulled the democratic elections held in the country, prior, and deposed the legitimately installed President, imposing martial-law, curbing all civil liberties and political freedoms, and abdicated its responsibility to stop the exodus of scores of desperate Haitians, mounting dingy-boats, rickety life-rafts, and fishing-

¹¹Stanley Hoffmann, ‘The Politics and Ethics of Military Intervention’, *Survival*, vol.37, no.4, Winter 1995-1996, pp.37-38.

¹²Michael J. Smith, ‘Humanitarian Intervention Revisited: Is There a Universal Policy?’, *Harvard International Review*, Fall 2000, pp. 73-74.

¹³Kelly Kate Pease and David Forsythe, ‘Human Rights, Humanitarian Intervention, and World Politics’, *Human Rights Quarterly*, vol.15, no.2, 1993, p. 298.

trawlers, to haul themselves over to the US. This fuelled the clamour for an intervention, ostensibly humanitarian, such that it restores President Aristide's democratic rule in consonance with what was expressed through the will of the Haitian people, and allows the latitude for democratic governance to take hold, regarded, as critical to emancipation of the needs of Haitians, and promoting their dignified human rights. Of course this would not imply by any extension or this instance extrapolation, that humanitarian interventions should be an avenue for the global community to arbitrate the politico-executive configuration of any intervened nation, since that would be an assault on the inherent and inalienable sovereignty of nations.

However, wherever it may be evidentiary that pursuing for regime-change that is morally inferior (such as the unacceptability of a military regime ensconcing itself by illegitimate means), or where countries find themselves trapped, in situations of fluidity and flux, that point to imminent or impending state collapse or vestiges of failed states dysfunction, then regime change may have to become integral to humanitarian interventions, albeit, in the mould of a necessary evil, to stave-off unmitigated perdition.

Nevertheless, what is most consensually concurred is that, humanitarian interventions are most compulsively and persuasively executed, in visages of egregious humanitarian distress, brought on by rampant brutalisation, and asperities in accosting conditions, which make for searing imagery and provoke amplified outrage. Such cases, often referred to as supreme humanitarian emergencies which "shock the conscience of mankind,"¹⁴ confront individuals with imminent existential threat to life and primal well-being. This said, monstrosity cannot quite be conceptually framed in categorical terms, but, is left to the sui generis appreciation of situations, from case-to-case, even whilst drawing-up tenets, rather than rules of engagement. It's akin to what US Supreme Court Justice William Stewart once said, about the phenomenon of 'Obscenity'; "I may not be able to define it, but, I know it, when I see it."

ROBUST USE OF FORCE OR CREDIBLE THREAT TO USE FORCE

For this foregoing reason, as is fleshed out within this thesis, humanitarian interventions are understood to be those actions of the international community, which fructify the actual or tangible use of force or a robust, credible threat aimed at squashing and

¹⁴Charles Maynes, 'Relearning Intervention', *Foreign Policy*, no. 98, Spring 1995, p. 107.

stamping-out the gross and systematised nature of human rights violations, transpiring, within a particular sovereignly delimited geography. Again, one could haggle and quibble over the precise contours, of what such use and/or threat to use force, encompasses and excludes, even precludes. Overtly, humanitarian interventions are categorized, as essentially an exercise in coercive interference, and hence, typically brings to bear a raft of measures, which can lean on statist dispensations, ranging from economic coercion acts of embargoes and sanctions, to the actual deployment of punitive military force. And, this trajectory of thought derives from good reason too, since, much of the human suffering endured, which humanitarian interventions seek to ameliorate if not alleviate, are the upshot of situations of armed conflict or political repression, where state authorities or warring protagonists take recourse to indiscriminate and disproportionate instrumentality of military power, against innocent civilians.

In such degenerative conditions, where the state regime or any of its irregular and illegally armed sub-national groups turn on their people, humanitarian intervention unleashed by a sovereign-state, a group of states convening together or an international organisation mandating such intercession, becomes incumbent, in the interest of maintaining peace, security and stability, if not the larger overarching considerations, of preserving Order and upholding Justice. Naysayers have often pointed to the fact that the innateness of force within humanitarian interventions, makes it vulnerable to the proposition of constituting a headlong rush to war, and therefore seen as courting a combat of sorts. There is no diminishing, derogating or detracting from the virtues of non-military methods, whether it be the employing of diplomatic steps to defuse tensions or any other avenue for non-military conflict management and resolution, but, if only they can meet with efficacy. The weight of empirical data from the 1990s, which is the epoch of consideration of this thesis, points to the proliferation of intra-state hostilities as juxtaposed against inter-state conflict, presenting a set of challenges to the global community, which were largely unforeseen, and therefore found ill-equipped to handle. Given that internal conflicts (virulence perpetrated within sovereign frontiers) portend logistical challenges spanning the absence of clearly defined rules of engagement to the ever possible recalcitrance of the warring parties to renege on assurances, to even the wilfulness to target non-combatants, it points to a profoundly messy and fraught terrain, to be interposed within, diplomatically or operationally.

Hence, an adequate framework guiding such intervention missions, must neither rule-in nor rule-out any actionable element from within the response tool-box, which implies,

assessing the complexity and enormity of the unfolding conflict on hand and appropriating sufficing measure of force, to act as potent deterrent, calibrated to arbiter, than some sledgehammer approach, doubling-down an imposed solution. A prime example of this principled mooring can be witnessed in the crafted approach of the international community to thwart the messianic intentions of the Saddam Hussein regime, in the context of the Kurdish and Shia minorities in Northern and Southern Iraq. Having assessed that a full-scale ground invasion would not be disproportionate, but would involve protracted presence without any guarantees of changing the facts on the ground in terms of the relationship that the Saddam regime had with non-Sunni communities in Iraq, the novel option of No-Fly Zones (NFZs) was pioneered, whereby the wherewithal of the Iraqi forces including their air assets to unleash mayhem on Kurds and Shiites, was severely restrained. Though the mechanism of NFZs was not provided for within international law or within the UN operative procedures, it was discerned and concurred-upon as a potent practical measure to posture robust credible threat of use of force, as and when the Iraqi military chose to impugn.

Imposing economic measures, though coercive in their own right, often are contingent upon the extent, to which they are scrupulously adhered to by the protagonists, sometimes the regional players and often the global powers that be. Besides, unless they are curated to be finely-targeted, and ensure objectivity in imposition and not simply neutrality, which would ensure fairness and not just being immune, such measures have invariably been skirted and circumvented around. Hence, when confronted with snowballing threat to human security and a rapidly degenerating situation, exhaustion of all non-military remedies is not a feasible option, as Rwanda and to some extent Somalia, manifested. However, the experience of the tumultuous decade of the 1990s exhibits, the practice of variegated types of humanitarian interventions with differentiated outcomes, which, notwithstanding foibles, have not shown any impulsive or overweening clamour or rush to interference, within sovereign frontiers.

MUTATING STATE BEHAVIOUR

R.J. Vincent defines intervention as comprising of activity undertaken by a state, a group within a state, a group of states or an international organisation, which interferes coercively in the domestic affairs of another state. It is a discreet event, having a beginning and an end, and it is aimed at the authority structure of the target-state.¹⁵ It is not necessarily

¹⁵Raymond Vincent, *Non-Intervention and International Order*, (New Jersey: Princeton University Press, 1974), p. 13.

lawful or unlawful, but, it does break the conventional pattern of international relations. In what remains a widely-quoted and often-surmised decoding, of the dynamics and mechanics of intervention, the trinity of elements incandescently stand-out, in that, the action ought to be compulsive in its impact; it must not be perfunctory, but rather be seminal of sorts; and, it should be curatively aimed, at the political authority structure of the target-state, with the object of requisite mutation, in the demeanour and disposition of the sovereign-entity.

The foregoing definitional delineation is important, in so far as it must be clarified that, humanitarian interventions are essentially an exercise conducted, within the bounds of a sovereign-state, but without, the consent of that sovereign-state, which, may seem an apparent oddity at first, but one which in itself, makes the course-option, path-breaking and not routine. It is this tenor that makes humanitarian interventions distinct, from the established framework proffered, under the tutelary aegis and auspices of the UN, whether provided for under Chapter VII 'Enforcement Action', and/or militating, through the agency good offices of the innovative mechanism of Peacekeeping Operations, an advent of the Cold War epoch in time.

Collective Security missions are targeted alright, but not to alter the demeanour or disposition of the political authority of the target-state, but to repudiate the brazen and indefensible of military transgressions, vis-à-vis another state, as was seen in the Iraq-Kuwait Gulf War response by the US-led UN mandated Multinational Force in 1990. In fact, during the only earlier instance of instrumentalizing such Collective Security operations, during the Korean Peninsula conflict of 1950-53, the attempted endeavour of the US at the head of the UN coalition, to overreach its designated mandate and seek to alter the sovereign circumstance of the Democratic Peoples' Republic of Korea (DPRK), under the guise of repudiating its forces, back out of the Republic of Korea, was denounced and demurred with, as malicious mischief. Besides, such collective security enforcement measures are by no means out of the ordinary, since they are provided for within the Charter, albeit that the juxtaposing adversarial binary of the Cold War, trammelled its operationalization, beyond the book-ending twin instances, mentioned aforesaid.

As for UN's Peacekeeping Operations, pragmatically innovated during the organisation's stewarding helm-ship by then United Nations Secretary General Dag Hammarskjöld, who famously quipped, that the premier association-of-nations global body, was not formed, to take humanity to heaven, but instead, to save and stave-it from hell, such operations, as and when mandated on twelve occasions during the Cold War era and proliferated since, have relied on the express consent, either of the sovereign-state through

acceptance by its dispensation in power, or with concurrence of the warring parties, when the situation has pitted the governmental regime against sub-national groups, steeped in rampant and profligate violence.

It would be sanguine to believe otherwise, than that, the spectre of human rights violations are intensely political and politicised, and hence, bring forth situations, where and when, either the state within whose boundaries the heinous violations are transpiring is complicit in the incidents or where the collapse of state authority makes it tenuous to claim, whether any latitude for eliciting consent from the withered authority, does at all exist. However, regardless of whichever scenario may be playing itself out, a humanitarian intervention, which seeks to respond to an aggravating or aggravated humanitarian distress, is actualised, without the consent or despite the non-consent of the concerned state, for the obvious fact, that no violator or transgressor, would ever acquiesce to being restrained, from executing his intent. Besides, why would a similar abuser-of-rights sovereign entity, ever countenance to any action, which proclaims to restrain it, from consummating the pernicious agenda at hand? For example, during the crisis that involved human rights violations alleged upon the regime of Sudanese President Omar Al-Basheir, through unleashing of militias-on-horseback (called Janjaweed) to perpetrate atrocities on the black population in Darfur region, the UN failed to deploy Peacekeepers during the apogee of the crisis, and even when it subsequently managed to foster a presence. It had to be done through accommodating negotiation and compromise with the Sudanese government, which permitted any such deployment, but only through the aegis of the African Union and on condition that such a multinational troop contingent would not comprise soldiers drawn from such countries, particularly regionally, as are perceived to be adversarial to the State and Government of Sudan. This arrangement could hardly be considered humanitarian intervention, from the realistic context of redressing the situation.

In each of the four case studies under the microscope in this thesis, it's evident that humanitarian interventions have been mounted in a manner that have compellingly leaned on the regime under the spotlight, and where no such entity has existed, then, upon the actors deemed to be recalcitrant and hence, compellingly exerted upon. Besides, each of the humanitarian interventions, have been far from, run-of-the-mill approaches; instead, have tended to highlight an exceptional element to their commissioning and implementation. Needless to state, that premised on the twin facets above, of course with the aberrational exception of Somalia, have for the large part, forcibly manoeuvred substantive changes in the

demeanour and disposition of the target-state and more specifically the administrative authority in power.

CONTEMPORARY HUMANITARIAN INTERVENTION: THE WHYS AND WHEREFORES OF BEING ‘HUMANITARIAN’?

Much of the corpus of germane literature, has displayed a curious proclivity to attend to questions concerning the conditions-qua-circumstances, surrounding the permissibility of humanitarian interventions of a muscular nature, either under a stark moral lens or through the prism of categorical legalese. While such endeavours could sub-serve the requirements for crafting an operational prescriptive, or constitute an exercise, foraging for legitimation in conduct, yet, it should not detract from the no less important dimension of identifying and establishing the basis of viable actors, who ought to be and could be exponents in such interventionism.

Conventional discourse holds that for humanitarian interventions to be legitimate, they ought to be multilateral. It merits mention that banal parlance describing interventions as “unilateral”, effectively imply that all or a vast majority of the operational aspects of such an intervention were determined and executed, by a single nation, preponderant in itself. Contrastingly, an intervention to be deemed “multilateral” is one where states act severally and collectively, possibly through the good offices of a formal international organisation. Under legal connotation, a “unilateral” humanitarian intervention would be one that has not been authorized by the UN Security Council, whilst “multilateral” humanitarian intervention would apply to those instances, where such approbation, was firmly in place.¹⁶ Noted scholar of international organizations, Prof. John G. Ruggie elucidates this distinction through reference to “qualitative” and “quantitative” dimensions of multilateral legitimation.¹⁷ Hence, under the rubric of qualitative descriptive analysis of interventions, unilateral humanitarian interventions conflate with “unauthorized” or “illegal” interventions, whereas multilateralism is synonymous with the collective decision-making authority of the United Nations, which deems the specific act of Humanitarian Intervention, permissible and legal, in a given situation, regardless, of how many states actually take part in carrying it out. As such, UN

¹⁶Inis Claude, ‘Collective Legitimation as a Political Function of the United Nations’, *International Organization*, vol. 20, no. 3, 1966, p. 369

¹⁷ John Ruggie, ‘Multilateralism: The Anatomy of an Institution’, in John Gerard Ruggie, (ed.), *Multilateralism Matters: The Theory and Praxis of Institutional Form*, (New York: Columbia University Press, 1993), p. 6.

sanctioned interventions confer multilateral legitimacy upon their agents, in a somewhat different sense than those that are carried out collectively by several states.

As to this qualitative dimension, when the UN Security Council authorizes a humanitarian intervention, under its Chapter VII powers, it is essentially legalizing and providing legitimacy to the act of intervention, more than it is designating specific actors, as legitimate agents of intervention. Whatever legitimacy the agent accrues, by undertaking an UN-sanctioned intervention, is only partially derived from the act being deemed as ‘legal’ by the UN. Thus, the legitimacy that the agent accrues, by undertaking an UN-sanctioned intervention, is derived from the fact that, an international body with near universal membership has authorized it, in the spirit of consultation and coordination, with other UN member-states. The act of intervention itself may even be conducted more or less by one state, though, if it is authorized by the UN, the state undertaking it may be said to possess a ‘unique’ legitimacy that one needs to be able to act.¹⁸

Though the United States intervened in Haiti in 1994, more or less of its volition and accord, however, both the US and its intervention maintained a sense of multilateral legitimacy, because it obtained prior UN Security Council authorization. The other aspect of multilateral legitimacy is more linear, and is what Ruggie refer to as the “quantitative” dimension. Here the legitimacy of the agents is derived from the fact that waging war for humanitarian purposes, has considerable potential for partisan abuse; a pervasive concern in the political discourse on humanitarian intervention. Smaller states are particularly apprehensive about any emerging “right” of humanitarian intervention, for fear that they will be the soft-targets of an invasion, intended to serve the geopolitical interests of the intervener, though under the pretext of humanitarianism.¹⁹ Consonant with this thought-process, interventions involving several states are usually preferred, in order to discourage the possible adventurism or potential for exploitation of the situation by a single state pursuing its own selfish interests. Hence, if an incident of human suffering is large-scale and severe enough to qualify for robust military intervention, then arriving at operational decisions, in concert, is the best means of ensuring that a particular state does not exploit the situation for its own ends, to the detriment and undermining of a humanitarian outcome. This is especially true if

¹⁸Eric A. Heinze, ‘Who Intervenes and Why It Matters: The Politics of Agency’, in Eric Heinze (ed.), *Waging Humanitarian War: The Ethics, Law and Politics of Humanitarian Intervention*, (New York: State University of New York Press, 2009), p. 117

¹⁹Jack Donnelly, ‘Genocide and Humanitarian Intervention’, *Journal of Human Rights*, vol. 1, no.1, 2002, p. 103.

operational decisions and other aspects of the conduct of the intervention must undergo a formal collective decision-making process, such as the one used by NATO.

In this sense, multilateralism legitimates the agents of intervention by “democratizing” decision-making, which allows the interveners to benefit from collective wisdom, gain broader support, and ultimately ensures that they are focused on the task at hand, viz., saving lives, which could be attributed to what transpired within and through NATO, during the air operation against Serbia, over Kosovo.²⁰ Quite apart from the unique “qualitative” multilateral legitimacy that UN authorization bestows upon agents of intervention, UN sanctioned interventions, in theory grant their agents, the “quantitative” aspect as well. According to the UN Charter, UN enforcement operations, which include UN-authorized humanitarian interventions, are to be commanded and controlled by the UN’s Military Staff Committee, composed of representatives of the Permanent Members of the UN Security Council, so that the UN can exercise operational control over the military forces, undertaking the intervention. In this way, the military forces are held accountable to the international community, thus precluding any one state from pursuing its own selfish agenda under the aegis of the UN. In practice, however, UN enforcement has never worked this way. Once Security Council authorization is obtained, the UN becomes a spectator while the member-states essentially direct their militaries autonomously. This becomes particularly problematic if one state has a preponderant role or is undertaking the intervention alone.²¹

Despite the practical problems involved in assembling a “pure” multilateral coalition, there is substantial support for the proposition that potential agents of intervention maintain more legitimacy if they act multilaterally, in both the literal quantitative sense and the unique qualitative sense. Both approaches confer legitimacy to the exercise of power by agents of intervention, which, according to prevailing thought in international relations theory, enhances the efficacy of the interveners. One could also argue that multilateralism in the quantitative sense enhances efficacy, by bringing the combined force of many states to bear on the target, both politically and militarily. On the face of it, then, a consequentialist approach to humanitarian intervention would place a high value on the multilateral legitimacy

²⁰Terry Nardin, ‘The Moral Basis for Humanitarian Intervention’, in Anthony F. Lang, Jr., (ed.) *Just Intervention*, (Washington, DC: Georgetown University Press, 2003), p. 21.

²¹Thomas Weiss, David Forsythe, and Roger Coate, *The United Nations and Changing World Politics*, 4th (edn.), (Boulder Colorado: Westview Press, 2004), p. 56.

of the agents of intervention. In practice, however, there are important ways in which multilateralism, while enhancing legitimacy, may actually undermine efficacy.

There is noteworthy empirical evidence that, multilateralism, particularly when conducted through a formal collective organization, slackens decision-making, facilitates dither and hesitance, and runs contrary to basic military understandings of unified command. Among the earliest evidence of this was during NATO's initial military involvement in the Bosnia crisis, in May of 1993. In this case, NATO was to provide air support to UN peacekeepers on the ground in Bosnia, protecting civilians inside "safe areas", from the onslaught of Serb assaults. In addition to NATO's own collective decision-making rules, however, there was a complex arrangement worked-out for authorizing airstrikes, one that required authorization, from both the civilian leadership at the UN and authorities at NATO. This "dual key" arrangement required, that officials from both organizations sign-off on airstrikes, even as either side held a scuttling Veto power, over when and where strikes could manifest. As a result of this elaborate process, the full force of NATO airpower was stifled, and because no authorization was forthcoming under the "dual key" arrangement, NATO was unable to act, when Serbs overran the safe area of Srebrenica, and subsequently executed eight thousand men and boys.²²

In contrast, NATO was much less hesitant to use force, when it bombed the former Yugoslavia in 1999, in order to avert ethnic cleansing in the province of Kosovo. While the US undeniably played an overwhelming role in NATO, both institutionally and militarily, the collective decision-making procedures were still a notable constraint, on the projection of principally US executed force, which some suggest, may have prolonged the operation in duration and heightened its intensity. NATO's political and military leadership had hoped that, a sustained bombing campaign would force Serb nationalist Slobodan Milosevic, to back down within days. But when he did not relent, and actually began to escalate his ethnic cleansing campaign in Kosovo, a debate ensued among NATO allies concerning how to proceed more aggressively. The thrust of the controversy was over target selection and approval, which according to NATO rules requires the consent of the North Atlantic Council (NAC), which consists of the permanent representatives of all NATO members-states; nineteen in number, at the time. Realizing the virtual impossibility of this, the NAC agreed to give its proxy on sensitive targeting decisions to then Secretary-General Javier Solana, who participated in target selection along with the US, Britain and France, who each had a "Veto"

²²Samantha Power, *A Problem from Hell: America and the Age of Genocide*, (New York: Perennial Publishers, 2002), p. 392.

over any target. Even with this streamlined selection process, NATO military commander General Wesley Clark complained intensely, about the cumbersome process of acquiring allies' approval for attacking sensitive targets and the overall lack of consensus among allies on how to break the will of Milosevic. The campaign that was initially predicted to last three days thus dragged on for seventy-eight long days.²³

In both of these instances, while the legitimacy conferred by the multilateral decision-making arrangements rendered the interventions more politically acceptable to international society, the price for this in both cases was both efficacy and rapidity of action. In the Bosnia crisis, for instance, it took over two years, during which there were multiple kidnappings of UN personnel, multiple massacres, and countless other atrocities, before NATO acted decisively. As for the Kosovo intervention, an exclusively US-operated intervention may well have posed a greater opportunity for US exploitation. But under the circumstances, the number of lives that could have been saved from a quicker and more decisive intervention might have rendered this a reasonable risk to take. None of this is to say that the pursuit of multilateral legitimation is not worthwhile. The dangers of partisan abuse are still great enough to prefer that the agent of intervention be a multilateral coalition. Unilateral state power, however, might at times be the better choice during times when people are suffering and lives are being lost while waiting for a multilateral consensus on military strategy or attempting to collectively decide the legality of attacking certain targets.²⁴ Hence, whether or not a single state or small group of states, acting outside a formal multilateral framework, maintain the requisite legitimacy to carry out an effective intervention, thus depends on the extent to which they demonstrate other qualities of legitimacy, as agents of humanitarian intervention.

The Post-Cold War phase in world politics has evoked the fundamental question, of whether the inveterately held sacrosanct character of state sovereignty, can at all be breached, without its consent, by institutional entities in the extant, to advance the protection of rudimentary human rights and fundamental freedoms? The turbulent and tumultuous decade of the 1990s was replete with dossiers of human rights violations, which cried-out for some form of external remedial action, evidenced in the prominent cases of the post-Gulf War Iraq, the break-up of the Federal Republic of Yugoslavia, state collapse in the Horn of Africa, atavistic ethnic pogrom in Central Africa, brutal repudiation of secessionist virulence in

²³Wesley Clark, *Waging Modern War: Bosnia, Kosovo and the Future of Combat*, (New York: Public Affairs, 2001), p. 422.

²⁴Michael Ignatieff, *Virtual War: Kosovo and Beyond*, (New York: Metropolitan Books, 2000), pp. 102-103.

Serbia, the quest for nationalist self-determination in East Timor, and the internecine ethnic and tribal warfare in West Africa. Across all these cases, UN Security Council resolutions were approved, whether specifically or derived instructively, citing humanitarian considerations, as the cogent and persuasive premise for action, and in all instances, these were multilateral military measures, transcending the notions of traditional peacekeeping, reposed of the stated purpose, of scrupulous implementation of the pertinent UN Resolutions, regardless of whether or not such action, was specifically authorized by the United Nations.

Of the aforesaid nine, the quartet of Northern Iraq, Somalia, Haiti and Serbia-and-Kosovo, can be considered as having involved at some stage a humanitarian intervention, within the contours of the definition, proffered and elucidated, foregoing. In these four cases, military action was initiated and incipiently pursued, without the approval of the government of the state, and justified largely on humanitarian grounds. However, in each of these four cases, the question of consent was a more complex and subtle proposition, with elements of consent to the international presence, playing its part at different points in time, during the piece. Notwithstanding, in all four cases, it was the United States military, that assumed stewardship of the intervening coalitions. As for United Nations' express authorization, of the four interventions under scrutiny, only two dossiers, as in Somalia and Haiti, enjoyed explicit Security Council authorization, whilst, in the cases of Northern Iraq and Kosovo, military action was initiated by a constellation of states, with the stated purpose of achieving the UN Security Council's objectives. However, it must be qualified that Kosovo ploughed a different furrow from the other cases under consideration, in that, though it did not receive the conventional pre-mission authorization from the UN Security Council, it was the benefactor of ipso-facto approbation. Notwithstanding, in each of the case study instances, the dimension of 'host-country/state consent', was neither voluntary nor uniform, given the varying accents of coercion, brought to bear by the international community, through its powers-that-be.

Due to the fact that, the issue of legitimacy of Humanitarian Military Intervention (HMI), traditionally belongs to the field of expertise of moralists and lawyers, most of the existing discourse, deals with the concept, exclusively qualitatively. Michael Walzer offers the best-known defence of the moral aptitude of national borders to ban humanitarian intervention. According to Walzer, there is a crucial distinction between domestic and international legitimacy. A government may be illegitimate internally, but that does not mean that, foreign armies are entitled to intervene, to restore legitimacy. Walzer claims that in most cases there is enough "fit" between people and government, in the fortuitous balance of

existing political forces in a society. But political processes are not valuable per se. Their value depends on their being minimally consistent with the imperative to respect persons.²⁵ It is even grotesque to describe the kinds of cases, which warrant humanitarian intervention as “processes of self-determination” and suggest, as Walzer does, that unless there is genocide, there is a necessary fit between government and people. David Luban put it most vividly, when he draws the following parallel; “The government fits the people, the way the sole of a boot, fits a human face; after a while, the patterns of indentation fit with uncanny precision.”²⁶

HUMANITARIAN INTERVENTION THROUGH THE ‘MORALITY’ PRISM

The dilemmas surrounding the whys and wherefores of instrumentalizing military force, has occupied the mind-space of regents and executive heads of states, alike, since time immemorial. The deployment of armed measures, into the internal environs of a particular state, in pursuance of humanitarian purposes, ought to be comprehended within the normative context and framework, in which they transpire. It’s undeniable that since the end of the Cold War, the normative context is much removed from what was unimaginable, in epochs prior, in so far as the rights vested in them, the duties expected of them, the objectives they covet, and the avenues for action reckoned to be plausible in the exercise of it. Much of the theological precepts, philosophical moorings and legal edicts, emanate from Natural Law and subsequently stem from the advent of Positive Law, with a viable framework for inquiry and analysis, effectively fusing the two.²⁷ Three exquisite works of erudition span the prevailing corpus of literature, contending with the legitimacy of militarized humanitarian intervention. ‘Just War or Just Peace’ pioneered by Simon Chesterman, which draws on a legalist perspective, framing the dilemmas as a choice between the quest for the “Just War” or a “Just Peace”, leading to a repudiation of the suggested legitimacy of armed humanitarian intervention.²⁸ ‘Saving Strangers’, written by Nicholas Wheeler, brings on a more permissive liberal perspective and spotlight on the vexing topic, elucidating and narrating factual instances of the gross miscarriage of humanitarian intervention, across praxis, sussing out the rationalizing basis for individual cases of humanitarian intervention, and their precise objectives, culminating in the acknowledgement of the norm of humanitarian intervention, as

²⁵Gerald Doppelt, ‘Walzer’s Theory of Morality in International Relations’, *Philosophy and Public Affairs*, vol. 8, 1978, p. 3.

²⁶David Luban, ‘The Romance of the Nation-State’, *Philosophy and Public Affairs*, vol. 9, 1980, pp. 395-96.

²⁷Martha Finnemore, *The Purpose of Intervention: Changing Beliefs about the Use of Force*, (Ithaca, New York: Cornell University Press, 2003), p. 53.

²⁸Simon Chesterman, ‘Just War or Just Peace?’, in Simon Chesterman (ed.), *Humanitarian Intervention and International Law*, (Oxford: Oxford University Press, 2001), p. 236.

a plausible case for invoking the Solidarist notion as an exception to customary and codified non-intervention, premised on the “guardianship of human rights everywhere.”²⁹

The UN commissioned project of the International Commission on Intervention and State Sovereignty (ICISS) engendered a Report that endeavoured to dovetail the irreconcilable tussle between the creed of human rights and the tenets of non-intervention, enjoining guidelines to address gross human rights infractions. The Report bases its reasoning on the shifted understanding of a state’s sovereignty, within the international system. It entails that, states no more possess an unlimited control over their delimited territory. Instead, it interprets sovereignty, as being conditional upon the state’s respect for a minimum standard of human rights: “...Sovereignty implies a dual responsibility; externally to respect the sovereignty of other states, and internally, to respect the dignity and basic rights, of all people, within the state”.³⁰

Moral principles supporting existence of legitimacy of the right of humanitarian interventions are based mainly on the natural law and the related Just War ethics. Natural law is grounded in moral reasoning. It holds that proper behaviour is governed by precepts that can be known by reason and are binding on all rational beings. Chief among these precepts is that, natural rights accrue to people, simply by virtue of their being human. Natural Law recognizes the right, and according to some thinkers, the duty of sovereigns, to use force, to uphold the good of the human community, particularly in cases where unjust injury is inflicted on innocents. The substance of the precepts, it must be said, has changed over time, suggesting that Natural Law is based on reason informed by current norms, rather than on pure reason. Natural law persisted as the basis for reasoning on the legitimate use of force (‘Just War’), until the Treaty of Westphalia of 1648, which brought the Thirty Years War to an end.³¹ The general Congress of European powers that produced the treaty, had the immediate effect of ushering in a period of peace in Europe and the long-term and more important effect of putting Positive Law before Natural Law. This enabled the development of the modern international system, with the sovereign state as the ordering principle of power.

²⁹ Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, (Oxford: Oxford University Press, 2000), p. 12.

³⁰ Andrew J. Bellamy, ‘Ethics and Intervention: The “Humanitarian Exception” and the Problem of Abuse in the case of Iraq’, *Journal of Peace Research*, vol. 41, no. 2, 2004, p. 132.

³¹ Terry Nardin, ‘The Moral Basis of Humanitarian Intervention’, *Ethics and International Affairs*, vol. 16, no. 2, 2002, p. 59.

A central tenet of positive international law is that law is determined by the joint will of sovereign states.

Natural Law embodies a welter of rules underpinned by universality, chaperoning the disposition of states within the milieu of international politics, in an exceptional manner that situates it higher than customary and treaty dimensions of law. In concurrence of circumstances, where moral imperatives weigh heavy and impel action in shielding the harmless, such that the crime being committed or having been committed is heinous and hideous, it makes an eligible case for intervention, even if it has to be in another state. To that extent, Natural Law conditions the understanding of Just War Theory (JWT), with its concomitant six-fold criterion of *Just Cause*; *Just Intent*; *Just Authority*; *Last Resort*; *Proportionality of Use of Force*; and *Reasonable Chance of Success*, respectively.³²

An innate cogent instinct militates, in driving the view that counsels for legitimate humanitarian intervention, beyond the remit of incumbent international law. This view espouses that circumscribing legitimacy of humanitarian intervention within the rigid framework of the UN Charter and its provisions, does disservice to the cause of protecting human rights, as the idea of a blanket ban on the use of force, construes as a fallacious notion. If the UN Charter is to be regarded as an animate instrument, dynamic and contemporary in its impact and impinge, then it ought to efficaciously tend to the instances and cases of aggravated humanitarian distress. All said, even as moral dimensions ought to lend support, a medley of arguments emanating from varied theoretical and philosophical traditions, serve to undercut the moral primacy, by enlisting necessary impediments towards the unbridled use of force for humanitarian reasons.

A quadrant of objections, the locus of which resides in the ethical realm, may be averred. Drawing on a realist strand of ethicality, it may be contended that an unregulated acceptance of a right to humanitarian intervention, outside the bounds of the UN Charter and framework firmament of international law, would possibly vitiate regional and global peace and stability, as the instrumentality of use of force would be in effect rendered to the domain of power-politics. Unless the attribute of Sovereignty is scrupulously respected, and done so mutually, the cause of preservation of international peace and stability, could be at an elusive premium. Hence, such a perspective benchmarks the overriding obligation for regional and global order as being epochal, over the moral clamour for promoting human rights and

³²Michael Walzer, 'The Moral Standing of States. A Response to Four Critics', *Philosophy and Public Affairs*, vol. 9, 1980, pp. 218-219.

democratic freedoms, predicated on the belief, albeit erroneous that human right violations are a fallout of crass violent situations only.³³

The following critique of humanitarian intervention concerns the intent of the potential intervening authority or intervener(s), in the context of the humanitarian intervention, undertaken. It is invariably argued that, the notion of an unvarnished and puritanical humanitarian motive intervention is rarefied in itself, almost to the point of being a misnomer. It is far too sanguine, even possibly gullible to reckon that sovereign-states would deploy men in flesh and blood and dip into their treasure-trove of public money, simply to adhere to a moral or empathetic obligation, devoid of any national interest, whatsoever. The decision to deploy force, whether at the individual sovereign-state level or at the level of international organizations, which has to depend on troop-contributions from states, is often a momentous decision, with high-stakes riding on it, most notably the inherent political risks of blowback and body-bag syndrome, beyond others. And if situations do not merit any accomplishment of national interests, it pays for political leaderships to remain non-committal and let someone else bell-the-cat, so-to-speak, in terms of allowing some other country to assume the onerous task. Political leaderships base their ensconce in power on informed public consent, which implies that the compelling case must be made out, in favour of the decision to send individuals in military fatigues, into harm's way, which seldom cuts or finds traction with popular audiences, if only made on the touchstone of morality, sans any tangible national interest. In particular, if such troop deployment missions pertain to treacherous landscapes and/or nondescript theatres, the threshold for broader acceptance is that much higher to meet.³⁴

It's been much too often noticed that an attenuated appetite to take up cudgels ostensibly for moral outcomes, renders the prima donna global governor of human rights, viz., the UN, hobbled, in stopping the humanitarian suffering, in geographical coordinates that represent mofussil areas and/or geopolitical backwaters. Total reliance on troop contingents emanating from sovereign states means that, the global body is hamstrung, regardless of the asperity of the situation, which could either leave the premier international organization, twiddling thumbs on the margins as the spectre festers and metastasizes, or to accord a mandate to any and all sovereign member-states, capable and willing to intervene, even if it

³³Terry Nardin, 'From Right to Intervene to the Duty to Protect: Michael Walzer on Humanitarian Intervention', *European Journal of International Law (EJIL)*, vol. 24,no.1, 2013, p. 69.

³⁴David Miller and Michael Walzer, *Thinking Politically: Essays in Political Theory*, (New Haven: Yale University Press, 2008), p. 244.

means an insertion into the situation for vested self-interests or enlightened collectivised interests, alike.³⁵

All of this and more contributes to the wider perception, of abject selectivity, rank arbitrariness, and utmost haphazardness, in commissioning and conduction of humanitarian interventions, leading to much consternation and rancour in myriad quarters. This said, it may be squared with that, it's simply part of the terrain for intervening entities and agents to compute the equation in terms of weighing up the pros and cons of any such intervention, and determining their course of action, based upon such cost-benefit ratio, which in most cases would effectively mean a SWOT analysis too, necessitated no less, by the invariability of finite resources, being demanded by multiple competing priorities.

Another line of criticism about permissibility of humanitarian intervention, beyond the purview of the UN Charter takes note of the fact that an unregulated right to such intervention could end-up being a convenient tool in the hands of the power preponderant nations, who could wield this instrumentality to arbitrate their political disputes.³⁶ Given the power differential that exists across the global order, such pecking order could trigger an unabashed misuse of the medium of humanitarian intervention, on conjured or contrived ruses and alibis. One possible scenario of how such an un-tempered right might devolve, could be to embrace the logic of 'multilateralism where we can, unilateralism where we must', on the part of the powerful sovereign-states. Alternatively, the influential sovereign-states with sway over lesser mortals within the UN Security Council could possibly trammel the larger trajectory of the Council's view, thereby acting as a spoiler, and throwing a wrench in the United Nations' consideration of the matter.³⁷

The third ethical objection to the right of humanitarian intervention goes to the heart of the intrinsic diversity of a latently eclectic world. The absence of homogeneity or uniformity in political values, social and cultural tenets implies the variegated nature of analysing and examining human rights standards. In an atmosphere of pervasive Westernization of value-systems, it is the powerful and influential states, violators of the creed from time to time themselves, that sit in judgement of oppressions and determination of conditions meriting interventions that assail sovereignty. The framework of Human Rights provisioning and protectionism is largely derived from Western conception, and more so from

³⁵Bryan Hehir, 'Expanding Military Intervention: Promise or Peril?', *Social Research*, vol. 62, no. 1, 1995, p. 45.

³⁶Iain Atack, Ethical Objections to Humanitarian Intervention, *Security Dialogue*, vol. 33, no.3, 2002, p. 282.

³⁷Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict*, (United Kingdom: Blackwell Publishers, 1996), p. 123.

the cognitive prism and analytical lens of the victors of World War II states and thereon, superimposed upon the broad swathe of the world as being universal. This humungous power that the Western world reposes in terms of narrative-setting based on power-values configuration, enables such states to hold peer states culpable for subjective non-compliance, and even elicit consensus, in pursuance of the same. Without clearly separating a minimalist conception of the human rights' protection from a maximalist intention to reshape societies according to the Western liberal-democratic image, the right of humanitarian intervention would enjoy high probability of being portrayed as a Western-driven norm reflecting the Western ability to manipulate the international opinion and to construct an illusory 'consensus'.³⁸

The fourth major objection to the right of humanitarian intervention breaks from the deontological approach. It states that no matter how well intentioned, humanitarian interventions are open to the possibility of doing more harm than help, the upshot of which would be an adversarial humanitarian outcome. Interventions of humanitarian nature are by definition, devoid of the consent of the target-state and hence, when they transpire, are vulnerable to being confronted by a pushback from the target-state concerned, or a popular putsch by the local demography against the intervening forces, or may even spur armed action by a neighbouring state(s), besides sending the intervention into a protracted quagmire of sorts, bringing new protagonists into battle. The battle fields are convoluted to the core, and the battle-lines are both known and unknown, leaving imponderables for interveners to consider, prior to getting stuck-in. While broad parameters of what constitutes a successful intervention are understood, given the uniqueness of every intervention, there is nothing like an archetypal or prototype of humanitarian intervention, to be simply emulated or replicated.³⁹

Questions about existence of sufficient moral ground for legitimizing the right of humanitarian interventions within the moral paradigm, seems to have no clear answer. Humanitarian interventions cannot from the moral perspective, be declared as either plainly legitimate or patently illegitimate. On the one hand, it would be possible to question the morality quotient and milieu of the international system, in which the states can unabashedly and with impunity, subject their citizenry to degrading human treatment, without the fear of condign punishment, and where the populace is condemned to a state of marooning despair.

³⁸John Laughland, John, 'Human Rights and the Rule of law: Achieving Universal Justice?', in David Chandler (ed.), *Rethinking Human Rights*, (London: Palgrave-Macmillan, 2000), p. 84.

³⁹Jennifer Welsh, 'From Right to Responsibility: Humanitarian Intervention and International Society', *Global Governance*, vol.8, 2002, p. 509.

On the other hand, notwithstanding the lack of sufficient certitudes about doing a humanitarian intervention and coming out strong, the entrenchment of an authority to such intervention is also vulnerable to the factuality of masquerading for insidious motives on the part of the interveners. Even though, the above roster of naysaying moral arguments, may seem to suggest an outweighing of the criticisms surrounding humanitarian intervention, relative to arguments in the affirmative, yet, it is just an overview of as many possible perspectives on the concept as possible.

HUMANITARIAN INTERVENTION THROUGH THE ‘LEGALITY’ MATRIX

The legal Classicists who are popularly known as the ‘Restrictionists’, acting in good faith but also through the lens of a ritualistic and literal textual reading of the Charter provisions, ardently adduce that there is no persuasive ground for claiming the existence of a right of humanitarian intervention. To begin with, they assert that, there are only two exceptions to the norm prohibiting the use of force in international relations as established by the Charter, viz., that of an assertion of an individual nation’s inherent and inalienable entitlement to self-defence, or that of collective self-defence, pursuant to germane UN Security Council authorization. The provisions of Article 2 (4), when read together with Article 2 (7), and combined with UN General Assembly Resolution 2131, unequivocally disabuses the notion that any other grounds constituting a threat or use of force in international relations exists, except with regards to the two exceptions noted above.

Furthermore, the framers of the U.N. Charter, in the backdrop of the atavism of WWII, at that precise juncture were inundated in the preoccupation to craft legislation that would be precluding or heavily constraining of any proclivity or propensity to instrumentalize armed/military measures, and hence, could not in any logical reasonability be expected to draft legislation that would amount to some skilful and nuanced permissibility to the use of force, thereby undermining the quest of the ideals and purposes of the UN Charter which was to “save succeeding generations from the scourge of war.”⁴⁰ This explains simply the twin exceptions to the general prohibition on the use of force and the eschewing of any caveat specifically in favour of humanitarian based intervention. Since the term “humanitarian

⁴⁰Michael Reisman, ‘Humanitarian Intervention and Fledgling Democracies’, *Fordham International Law Journal*, vol. 18, 1995, p. 794.

intervention” cannot be found anywhere in the text of the Charter, it indicates the non-existence of any right to use force in support of humanitarian causes.⁴¹

Notwithstanding, it is argued that, two other U.N.G.A. Resolutions militate against the use of force for humanitarian reasons, viz., U.N.G.A. Res. 2625 (XXV) on the ‘Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter’, 1970, which provides that “No state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of another state”,⁴² and UNGA Resolution 3314 of 1974, which defines “aggression” as “the use of armed force by a State against the sovereignty, territorial integrity or political independence of another state...” stated categorically that “no justification of whatever nature whether political, economic, military or otherwise, may serve as a justification for aggression.”⁴³

Besides, the Charterist adherents, further base their argument against the right to use force for humanitarian purposes, on the provisions of the Charter with regard to the use of force in self-defence, claiming that such was the profound apprehension amongst the Charter framers about the potential resort to unilateral use of force that, they rather skewed in favour of circumscribing the right to self-defence, itself. This claim is premised on the fact that, if an action is taken in self-defence, the state must immediately inform the Security Council immediately, and once the Security Council acts in repudiating such actions, the right to self-defence stands extinguished. Such constriction, even in situations which are considered as legitimate use of force, attenuates even the remotest possibility, which the anyways contentious case for humanitarian intervention, would invite. Finally, the Classicist/Restrictionists argue that, the drafters of the Charter clearly intended the formulation “against the territorial integrity or political independence of any state” to buttress, rather than restrict, the ban on the use of force in international relations”, hence, obviating the potential for actualisation of humanitarian interventions without them being found to be illegal under the UN Charter.

The juxtaposing Legal Counter-Restrictionists, also known as the Legal Positivist-Realists, on the other hand argue that, the inception of the United Nations neither extinguished nor undermined the Customary Law rule of humanitarian intervention; if

⁴¹Michael Akehurst, ‘Humanitarian Intervention’, in Hedley Bull (ed.), *Intervention in World Politics*, 1984, p. 95.

⁴²U.N.G.A. Res. 2625, U. N. GAOR, 25th Sess., Supp. No. 28, at 121, U. N. Doc.A/8028 (1970).

⁴³U.N.G.A. Res. 3314, U. N. GAOR, 29th Sess., Supp. No. 31 at 142, U. N. Doc.A/963 (1974).

anything, the Charter extended and emphasized the right of humanitarian intervention. Firstly, it's contended that, the prohibition of the use of force in Article 2(4) of the UN Charter is by no means comprehensive, in the sense that "it forbids only the use of force, when it is directed against the territorial integrity or political independence of any state," where Territorial Integrity constitutes "preventing the permanent loss of a portion of one's territory."⁴⁴ By no stretch of imagination and under no envisaged or unforeseen scenario, does or would humanitarian intervention, seek to abrogate the sovereignty or abolish the independence of a state; if at all, it could simply comprise the interim disruption, in sovereign function or performance of the regime, exercising de jure or de fact governance.

The Argentine international legal scholar Fernando Teson, a strong advocate of the legality of humanitarian intervention, sums up the above views regarding the effect of humanitarian intervention on the political independence and territorial integrity of the target state, averring that the use of force is prohibited, only when it impairs the territorial integrity of the target state; or when it affects its political independence; or when it is otherwise against the purposes of the United Nations, contending that genuine humanitarian intervention neither impairs the territorial integrity of the target state nor results in political subjugation.⁴⁵

Even on the 'purposes' test humanitarian intervention ought to hold its own, since, its instrumentality is expressly in pursuance of the promotion of justice and human rights, which is not only one of the ideals and purposes set out within the Charter, albeit in its Preamble, but is also staked-out in Articles 55 and 56 of Chapter IX of the organisation's constitutive document. The dint of any regime, perpetrating serious human rights violations, would, in all reasonableness be deemed to be acting in a manner, inconsistent and incompatible with the ideals and purposes of the UN Charter, hence, ought not to enjoy the generic preclusion of the use of force, based upon a considered enlightened discerning of the sentiment latent, in framing of Article 2(4).

From the literal textual perusal, it's evident that the formulation of Article 2(4) despite its crispness in articulation, leaves a cavernous grey-area in interpretation, due to what is unsaid, more than what is said. As a thumb-rule canon in law, the mention of something implies the exclusion of all not mentioned, however, when law operates in conjunction with high-politics, one could make the argument here that, what has been expressed is instructive,

⁴⁴Steve Simon, 'The Contemporary Legality of Unilateral Humanitarian Intervention', *California Western International Law Journal*, vol. 24, no. 1, 1993, p. 128.

⁴⁵Fernando Teson, *Humanitarian Intervention: An Inquiry into Law and Morality*, 2nd (edn.), (Brill-Nijhoff, 1997), p. 150.

thought what is conspicuous, by its concealed omission, could be vital. Generally, if a provision can be interpreted reasonably without leaving any words redundant, that interpretation is preferable, to the interpretation that leaves some words redundant. Sussing the superior of values enshrined and given vent to by the Charter, the Classicists argue that, the most paramount of values sought to be protected under the Charter regime, is that of non-intervention, which the framers believed, would culminate in world peace, and it's this desire for peace that makes the prohibition on the use of force in international disputes, one of the most fundamental goals of the United Nations. Thus, under the Charter, the use of force is not legitimized, simply because it is in the interest of justice, but because the Charter prioritized peace over justice, in the event of a conflict between these two important goals of the United Nations.⁴⁶

Furthermore, a sneak-peek at the language adopted by the UN Charter pertaining to the safeguard of human rights is interesting, in that, despite one of the proposals in the working drafts during pre-Charter confabulations positing the imperative for usage of "protection" of human rights, what ultimately got incorporated within the Charter phraseology, was the "promotion" of human rights. While the upholding of the former nomenclature would have posited for a rigorous defence of human rights, the embrace of the latter term resulted in a more anodyne and tepid framework to address the subject, when even a characterisation as "respect" for human rights could have buttressed the mechanism, that much more. Hence the acknowledgement of the multitude of nations, as to the insufficiency of provisioning to ensure a robust safeguarding of human rights, in favour of a scope for ostensibly hortative and suasion-filled actions.

However, it would be untenable to suggest that human rights concerns constituted the preserve and province of those exercising sovereign domestic jurisdiction, since such a conclusion would undermine even render voided, the constellation of international agreements, including those which are provided for by the likes of precursor Hague Protocols in the early Twentieth century and the later Geneva Conventions, as also the Covenants of Civil and Political Rights, and Economic and Social Rights, besides the Genocide Convention, the Bill of Rights and the International Refugee Law and its ilk, all of which afford human rights to human individuals, albeit to specific sections of such individuals, and largely in the context of conflict-ridden "wartime" situations. Humanitarian Intervention, so

⁴⁶Tom Farer, 'An Inquiry into the Legitimacy of Humanitarian Intervention', in Lori F. Damrosch and David J. Scheffer (eds.), *Law and Force in the New International Order*, 1991, pp. 185, 190.

designated, becomes an exception, since it alludes to defence of individuals and humanity in classically defined conditions of “peacetime”, though far from it in verity. Extrapolating from this, the pro-interventionists argue that, there is a necessary link between the maintenance of peace and respect for human rights, in so far as human rights would be of international concern, as soon as it was foreseeable that they presented a threat to the peace.⁴⁷

The UN Charter provides the Security Council the authority to intervene when the peace is breached; hence, it is argued that, serious human rights abuses and deprivations, should give rise to an analogous permission. While arguments at both ends of the spectrum are tenable, what is eminently clear is that the drafters of the UN Charter evinced interest in ceasing aggressive tendencies of truculence as also infractions of human rights, though it isn't clear as to whether they concurred to allow one at the expense of the other or to pursue them concurrently, in playing-it-by-ear. Sussing the intent of a large group of people that far back in time, is always formidable and fraught and the most convenient window on what may have been the thought process, is the context of the time. This said, to contend that, a prohibition on unilateral use of force for human rights amounts to a tacit acceptance of the non-existence of human rights, stems from the odious fact that, denying force to curtail human rights violations, when all other methods have proved futile, only means that, those human rights are devoid of remedy.⁴⁸

There has also been the inclination of many fraternal scholars of the Positivist Legal tradition, to adduce the grounds for a right to humanitarian intervention, by pointing to the series of events during the Cold War, which they contend, were interventions undertaken due to humanitarian reasons, most notably the Indian intervention in the then East Pakistan soon-to-be Bangladesh (1971); Vietnam's intercession in proximate Cambodia (1978-79), Tanzania's involvement in contiguous Uganda (1979), etc.⁴⁹ However, as a cogent rudimentary understanding would show, these interventions, though on ostensible humanitarian reasoning, and largely favoured by the international community, yet, did not fulfil the other tenets of a legal humanitarian intervention, for not being motivated by solid realist fulfilment of national interest including of not seeking to impair the territorial integrity and political independence of those target-states (India's actions had the implicit intent of

⁴⁷HerschLauterpacht, *International Law and Human Rights*, (London, 1986), pp. 145-46.

⁴⁸Antonio Cassese, 'Ex Iniuria Jus Oritur: Are We Moving Towards International Legitimization of Forcible Humanitarian Countermeasures in the World Community?', *European Journal of International Law*, vol. 10, 1999, pp. 23-24.

⁴⁹Michael J. Bazylar, 'Re-examining the Doctrine of Humanitarian Intervention in Light of Atrocities in Kampuchea and Ethiopia', *Stanford Journal of International Law*, vol. 23, no. 2, Summer 1987, pp. 547, 595-96.

hiving Pakistan by assisting the independence movement in the latter's East, with similar rationale suspected in the instance of Vietnamese forces, intervening on the side of the rebels, in the then Kampuchea), to being conducted in a manner that assailed or sullied the consideration of right authority, since these interventions were carried out unilaterally by individual states within the comity of nations, without requisite authority elicited from the UN.⁵⁰

Realists argue that even if the UN Charter sought to prohibit the unilateral use of force for humanitarian purposes, states retain a residual right, owing to the fecklessness of the Security Council to act, when confronted with the effrontery of gross violations of human rights. In such a course of circumstances, it would only seem plausible a course of action, for an individual state to step forward to realise the otherwise obligated duty of the international organisation, such as the United Nations, which is widely acclaimed in regard as the repository of legal sanctity and legitimacy, particularly when, member-states of the UN have relinquished their customary right to use force, in favour of creating an effective collective security and enforcement machinery at the UN. If only the global body, found in enduring imbroglio and impasse verging on dysfunction, through the heyday of the Cold War, had found a way out of the stasis, then singular countries would not need to assert their right of unilateral recourse to armed force.

A look at the context of the UN Charter does not help in the determination of the legality of humanitarian intervention under the Charter. As stated earlier, both views on the interpretation of Article 2(4) are tenable. An inquiry into the UN Charter's preamble, an important part of the context of the treaty, provides no answer as to the legality or otherwise of humanitarian intervention under the Charter regime. The preamble states among other things the determination on the part of the members to "save succeeding generations from the scourge of war." However, it urges states to put into place a system under which "justice" can be maintained. This may include using force to overthrow regimes that persistently deny fundamental human rights to their own citizens. Thus, the two dictates of the preamble as listed above are in direct conflict with each other, one supporting the legality of humanitarian intervention and the other not. The object and purpose of the UN Charter is of little help as the competing values, peace and justice are both part of the purposes of the UN.⁵¹

⁵⁰Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, (Oxford: Oxford University Press, 2000), p. 62.

⁵¹Peter Malanczuk, 'Akehurst's Modern Introduction to International Law', quoted in Jeffrey Dunoff et al, *International Law: Norms, Actors, Process; A Problem Oriented Approach*, (1stedn.), (Boulder, Colorado: Aspen Publishers, 2002), p. 827.

The Vienna Convention on the Law of Treaties stipulates that, where the perfunctory meaning imbued within a treaty provision is equivocal, auxiliary avenues at interpretation, ought to be taken recourse to, i.e. travauxpreparatoires, and the circumstances of its conclusion. However, in this instance, such travauxpreparatoires of the Charter itself does not help to entangle the knots, in determining the true meaning of Article 2 (4) of the Charter, due to little documentary evidence pertaining to the content of the travauxpreparatoires of the Charter. Scholastic opinion is also not unanimous on the issue; whilst some contend that, the travauxpreparatoires is of little assistance in the search of the meaning of Article 2(4), others have contrasting accounts, of the content of such travauxpreparatoires.⁵² A cursory glance at other legal instruments, inked, in the years immediately preceding the signing of the UN Charter reinforces the perception that the use of force was generally prohibited at the time.

The Kurdish population in Iraq has long claimed a right to sovereign status since the late 19th century. However, their geographical dispersion as a community, spans Iraq, Iran, Syria and Turkey, and has consequently had them confronting persecution to varying extents, by all these states from time to time, most notably in 1985, when Saddam Hussein's Iraqi government started systematically destroying Kurdish villages and even used chemical weapons against some settlements, killing as many as 10,000 Kurds in the process.⁵³ In the wake of the 1991 Gulf War, Kurdish resistance fighters and community rebel elements, sought to exploit the situation in eking-out territorial gains, through ground level advances. However, their military gains were short-lived when Iraqi forces again started attacking Kurdish villages and massacred the civilian population on a large scale, with an estimated one and half million Kurdish civilians finding themselves trapped, within brutalising Iraqi reprisal attacks.

The UN Security Council passed UN SC Res. 688 on 3rd April, 1991 stating that the Security Council "Condemns the repression of the Iraqi civil population... and Demands that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately end this repression ... and Appeals to all Member States and to all humanitarian organizations to contribute to these humanitarian relief efforts".⁵⁴ This Resolution, though referred to a "threat to international peace and security", nevertheless, fell short of authorizing

⁵²See Article 32 of the Vienna Convention on the Law of Treaties, 1969.

⁵³JaneStromseth, *Iraq's Repression of its Civilian Population: Collective Responses and Continuing Challenges in Damrosch, Enforcing Restraint: Collective Intervention in Internal Conflicts*, (New York: Council on Foreign Relations), 1993, p. 83.

⁵⁴See the full text of United Nations Security Council Resolution 688.<http://unscr.com/en/resolutions/688>, (Accessed on 12November 2019)

forceful measures under Chapter VII of the Charter, with the formulation of the resolution, nowhere mentioning any authority to employ collective enforcement measures and did not expressly authorize any military intervention. With the then Soviet Union and China stoutly opposed to any intervention, much less under grey-area attribution to Collective Security measures, the said resolution had to slot into, what is typical of transpiring at the corridors of the UN, which is to approve resolution drafts, which are a watered-down and diluted shadow of their earlier robust selves, and often the upshot of intense political negotiation, leading to accommodation and compromise, that represents the lowest common denominator, in terms of principled strategic objectives to be accomplished.⁵⁵

By April 1991, the United States together with allies United Kingdom and France, announced their plans of ‘Operation Provide Comfort’ to establish ‘Safe Havens’ and a ‘No-Fly-Zone’ in Northern Iraq. The then UN Secretary General, Javier Perez de Cuellar, voiced apprehension that such unilateral arrogation of the military means without Security Council endorsement, albeit, to put paid to the Iraqi regime’s savage treatment of its Kurdish minority, would amount to a potential violation of Iraqi sovereignty. Nevertheless, the proposed intervention by the USA, the UK and France commenced on 16th April 1991, with US President George H.W. Bush pronouncing the operation as having been motivated by humanitarian concerns, with the British Foreign Secretary, Douglas Hurd, stated that sovereign countries essentially operate under and within a framework of international law, that does not require every nuance in conditions of extreme humanitarian need, to be approbated prior and in express terms, by the UN.⁵⁶

Shortly after the intervention though, the exuberantly intervening triumvirate of countries endeavoured in an attempt to have the UN assume responsibility for the Operation. Iraqi consent was needed to legalise the same and on 18th April 1991, an agreement was reached with Iraq concerning the presence of a limited number of UN troops, to be stationed as guards and the establishment of 100 civilian aid centers to be situated in Iraq. It is thus argued that Iraq consented in the intervention and it is therefore legal through consent, albeit after the initial plunge. These actions demonstrate three immutable facets from a legal standpoint. Despite President Bush and Foreign Secretary’s Hurd’s proclamations, validation of action by the UN enjoys almost universal consensus to render the mission, popularly legal.

⁵⁵Peter Malanczuk, *Humanitarian Intervention and the Legitimacy of the Use of Force*, (Amsterdam: Het Spinhuis, 1993), p. 18.

⁵⁶Interview aired on BBC Radio on 19th August 1992, and later printed in United Kingdom Materials on International Law, *British Yearbook on International Law (BYIL)*, vol. 63, 1992, p. 824.

If this wasn't enough, then the initial exuberance to impose punitive pressure upon the Iraqi regime, though greatly helpful, had its limits and that the best stance was to extract concessions from the regime quite softened-up, on the back of such proactive coercive measures having been deployed. Furthermore, whilst such humanitarian induced military ingress may have constrained the sovereign functioning of the Saddam regime, it did not impair either the territorial integrity or the political independence of the Iraqi state, since the mission was confined to shielding the defenceless Kurdish civilians from being purged, and neither was any collateral support extended to Kurdish political entities in respect of their demands for autonomy and self-rule nor were any covert machinations deployed, aimed at vivisectioning the Baathist Iraqi Republic.

This said, UNSC Res. 688, by itself, did not provide the legal basis for the operation, recognised as much by the British Government, which, through a memorandum to the British Foreign Affairs and Commonwealth Office, vide its legal counsel said as much, that "the intervention in Northern Iraq "Provide Comfort" was in fact, not specifically mandated by the United Nations, but the states taking action in northern Iraq did so exercise of the customary international law principle of humanitarian intervention."⁵⁷ However, based on the motives and outcomes, it may be declared, that the intervention was most notably humanitarian. Furthermore, it's been held that the members of the Security Council, by remaining coy about the operation, tacitly acquiesced in the doctrine and acceded that such rules were part of Customary Law.

Despite being devoid of a clear expression of *opinio juris* (established state practice), by the international community to declare and designate the said Northern Iraq (Operation Provide Comfort) intervention as humanitarian, yet, the effective implementation of the conceptual phenomenon of 'Safe Havens' in Northern and Southern Iraq and the rewards that accrued in terms of fulfilling the humanitarian objective of protecting non-Sunni communities, marked in the words of Nicholas Wheeler, a solidarist movement in the society of states, which has gone on to mark a salutary condition-precedent that has entrenched to the point of being replicated in the international community's more recent intervention in Libya, not to mention the slew of interventions which materialised, during the decade of the 1990s in particular, citing humanitarian concerns and causes, all of which points to an entrance into normative vocabulary of the global comity of states.

⁵⁷Francis K. Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention*, (The Hague: Kluwer Law International, 1992), p. 155.

With the signing of the Dayton Peace agreement on 21st November 1995 marking the end of the Bosnian War, one would have thought that the milestone for the achievement of peace for the region had arrived. However, this expectation quickly proved to be a false dawn, as the treatment meted out to the Kosovo-Albanians (Kosovars) by the Federal Republic of Yugoslavia (FRY) President, Slobodan Milosevic, began to acquire intolerable and uncondonable proportions. The rights of the Kosovars under the 1974 Federal Republic of Yugoslavia constitution stood suspended, and implementation of strict segregation policies in Kosovo, had become passé. Confronted by the Kosovo Liberation Army (Ushtria Climitare e Kosoves – the UCK), the Serbian National Army which conflated with that of the overarching National Armed Forces of the Federal Republic of Yugoslavia (FRY), intensified its brutalisation campaign of mass atrocities, that invited the scornful attention of the international community, with the United Nations Security Council adopting Resolution 1160, condemning “the use of excessive force by Serbian police forces against civilians and peaceful demonstrations in Kosovo, as well as acts of terrorism by the Kosovo Liberation Army”.

However, as if archetypal with a cautiously circumspect and innately risk-averse institution, the said resolution fail to prescribe any meaningful solution to the conflict, though some form of an arms embargo was instituted and the parties were exhorted to enter into substantive dialogue. With Serbian unleashed hostilities continuing unabated and the mass exodus of Kosovars fleeing into neighbouring Albania and Macedonia, being witnessed, the Security Council cranked it up by passing Resolution 1191 on 23rd September 1998, which was formulated as “affirming that the deterioration of the situation in Kosovo, Federal Republic of Yugoslavia, constitutes a threat to peace and security in the region.... Demands ...that, the authorities of the Federal Republic of Yugoslavia and the Kosovo Albanian leadership take immediate steps to improve the humanitarian situation, and to avert the impending humanitarian catastrophe.”⁵⁸ Although the situation was widely regarded as a case falling under Chapter VII of the UN Charter, the demands made in the resolution were not backed by a threat of military action, with a clear and categorical authorization by the Security Council to use force not feasible, due to strenuous Chinese and Russian opposition, albeit for similar and dissimilar reasons, but which brandished the threat of casting a Veto.

⁵⁸See the full text of UN Security Council Resolution 1199 (1998).<http://unscr.com/en/resolutions/1199>, (Accessed on 26 November 2019)

Far from being a blood-curdling rush to intervention in the name of humanitarian emancipation, NATO availed its good-offices to mount a calibrated escalation approach, which first involved, dispatching the US Special Envoy Ambassador Richard Holbrooke to Belgrade, in an apparent bid to persuade President Milosevic to accept a cease-fire and the presence of inspectors, drawn from the Organisation on Security and Cooperation in Europe (OSCE).⁵⁹ Even when the fragile ceasefire agreed to by both sides collapsed, descending into mutual recrimination, leading to the FRY forces ambushing Kosovar villages such as Racak and killing innocent civilians, NATO invited the protagonists to Rambouillet outside Paris, in a last ditch effort to forge peace, of course which fell through, this time due to Serbian intransigence, if the last time it was on account of Kosovar recalcitrance. Even amidst a fresh round of ethnic cleansing acts by the Serbian forces, NATO explored a further last minute plea for restraint, before launching full-on air strikes against Yugoslav positions, on 23rd March, 1999. Such measured ramping-up of the operational approach strengthen the argument of those who favour humanitarian interventions, which can point to due diligence and deliberation driving such actions, and attenuates the argument of those who insinuate that humanitarian interventions are but a disguise for nakedly unabashed hegemonic designs of the powerful state(s).⁶⁰

In this case, the NATO credibility was at stake, given that it found itself in uncharted territory being asked to commandeer an operation, brought on through circumvention of the UN Security Council. NATO as a collective defence alliance, established at Cold War nascence with the avowed objective of containing Soviet communism, could under no allowance whatsoever be regarded as a Regional Security Organisation and thereby thought off as having some latitude to execute the operation, through creative reading of the provisions of Articles 52 to 54, under Chapter VIII of the UN Charter. Any excessive adventurism, would be imputed back to the dint of overwhelming American influence, over the alliance's politico-diplomatic and military operations wherewithal. While this still does not serve-up the rationale, for the said operation to be considered legal, based on any customary rule of intervention within international law, nevertheless, the postulation that the action was aimed at nothing more but only averting a massive impending human catastrophe at the hands of a vile regime, lends it credence towards legalisation. The exhaustion of all

⁵⁹Bruno Simma, 'NATO, the UN and the Use of Force: Legal Aspects', *European Journal of International Law*, vol. 10, no. 1, 1990, p. 5

⁶⁰Dino Kritsiotis, 'The Kosovo Crisis and NATO's Application of Armed Force against the Federal Republic of Yugoslavia', *International and Comparative Law Quarterly*, vol. 49, 2000, pp. 330, 337.

possible diplomatic and that allied coercive measures had run its course in the matter, was evident, and if there was to be a salvaging operation at thwarting the repressive intent and capacity of the Milosevic regime, it had to be militarily coercive in nature, was the common refrain of Western leaders, proponent scholars and adherents, alike.⁶¹

What's most unique to the situation and fits into the sui-generis understanding of events in international politics, is that, when the Russian Federation which termed the post facto consideration of what had transpired in Serbia, as a choice between law and lawlessness, adduced its draft Censure Resolution with the support of Belarus and India, it was shot down by a handsome margin of 12:3, with as many as six non-Western joining the unprecedented move, whereby the UN Security Council had expressly stopped short of denouncing a military intervention, conducted outside its bounds, and which had manifested its ham-handedness.⁶² The legal significance of the case stems from the fact that it was no longer just the exaggeration of jurists sympathetic to humanitarian intervention, but, rather, the inner politico-diplomatic workings and popular express within the UN, which supported the doctrine of humanitarian intervention.

There are at least two distinct though intersecting strands of legal argument that could support a sustainable conclusion that the use of force in circumstances of dire humanitarian need would be lawful under international law notwithstanding the absence of an authorising Chapter VII resolution of the UN Security Council or other Charter-based justification (such as collective self-defence). The first strand is purpose-driven, focused on the insufficiency of a narrow, traditionalist view of the law on such matters and the consequential imperative to translate from the existing law to address circumstances of dire humanitarian need. This approach contends for the rapid crystallisation of a norm of customary international law in favour of a principle of humanitarian intervention, akin to the process that has seen the rapid crystallisation of other principles of customary international law, such as that of maritime straight base-line delimitation, on the basis of only limited and even contested. The principle is State practice (*opiniojuris*) while necessary, is not absolute, when in compelling reason and need.

The second strand is more rooted in the detail of the law, pulling together threads of practice that, in isolation may appear fragile and unreliable, but which, when knitted together,

⁶¹GlennyMisha, *The Balkans 1804-1999: Nationalism, War and the Great Powers*, (London, Granta Books, 1999), p. 657

⁶²Eric Adjei, 'The Legality of Humanitarian Intervention', *University of Georgia School of Law*, 2005, p. 65.

are more robust and compelling. As every informed litigant knows, an assessment of the legality of contested conduct is seldom a linear matter, there invariably being another side to the case. In the case of the law on humanitarian intervention, an analysis that simply relies on the prohibition of the threat or use of force in Article 2(4) of the UN Charter, and its related principles of non-intervention and sovereignty, is overly simplistic. The law in this area is more complex, even before one gets to any complicating issues of fact and imperatives of policy. To expect that the edifice of legal prescription would keep pace with the changing requirements of circumstances, is a stretch, since, it is anecdotally and empirically well observed and established, that the juridical architecture governing the international legal realm, tends to enjoy a process bias steeped in status quo, which leaves it invariably inertia-smitten and largely static. A good example would be the UN Convention on Law of the Sea, which was last adopted back in 1982, even as matters pertaining to jurisdiction within the maritime space and sphere have grown manifold, most notably the interpretation of freedom of navigation, traversing the high seas and across international waters. However, at least in the international humanitarian law space, broadly impinging on human rights, there has been patchy progress, through the decade of the 1990s, in particular, with the international politico-legal community's embrace of the UN mandated International War Crimes Tribunals (IWCTs) for conflicts in the former Yugoslavia, a similar IWCT for Rwanda, the Special Court for Sierra Leone, etc. Similarly, the mutated appreciation within International Refugee Law of the 1950s, by incorporating the Rights of the Internally Displaced Persons (IDPs) through the mid-1990s, and the Rome Statute based enshrining and operationalization of the International Criminal Court (ICC), at the turn of the century, further strengthened the argument in favour of a new human-rights framework, in conceptualisation, discourse and operative behaviour, anchored in the appreciation of the imperative for substantive enjoyment of such rights, which emphasises the 'performance' of such rights of individual and communitarian humans over simple 'enacted provisioning', and the prioritization of the proactive defence of such human rights, when compromised or vitiated, over routine sentiments of 'eligible-entitlement.'

The end of the Cold War and the demise of the bipolar schema in world affairs, onset a material and perceptible pivot in interventionist diplomacy, drifting away from quintessentially geopolitical interests and towards ostensible humanitarian claims to alleviate human privations. Through the tumultuous decade of the 1990s, this hasn't been particularly noticed as a cogent impulse within US foreign policy, both in terms of its direct enactment

and as channelled through the portals of the UN, and intermittently, through NATO. When viewed from the prism of law and morality, this turn in interventionist practice, marks a welcome development, despite the fact that it has floundered in key moments, due to its inevitable predication upon a shallow commitment of material resources and political will, which invariably underestimate the burdens associated with carrying humanitarian diplomacy to their logical conclusion. If earlier geopolitical interventions had frequently failed, owing to the engendering of a medley of indigenous, nationalist resistance and counter-intervention forces, then humanitarian interventions in contemporaneous times exude a chequered record, largely because they cannot be perceived as functions of a mathematical proposition, which equates prospective success with the magnitude of money, tenor weaponry, or quantum configuration of ground forces, deployed.

Key to a successful humanitarian intervention, as due experience informs, suggests a number of conclusions with respect to humanitarian emergencies. At the outset, given the available levels of wherewithal, the best play is for states intending to mitigate acute suffering, is to be seriously invested and engaged in a preventive role, which may mean anything, from symbolic presence to a more substantial footprint, in terms of funnelling socio-economic relief, to fostering constructive diplomatic intermediary services to the troubled states. Furthermore, external encouragement of nationalist tendencies toward self-determination, needs to be balanced and tempered, by an adequate focus on protection and provisioning of human rights, else, the intervention could be construed, as an external coup in usurpation. This said, once battlefield exploits have produced, what distinguished conflict resolution scholar Prof. William Zartman, has in pioneering construct called, a “*Mutually Hurting Stalemate*” situation, external diplomatic good offices and military force presence can serve as a catalyst in exhorting and implementing a pace process, amidst ennui towards armed struggle, on the part of the protagonists.⁶³

Notwithstanding, during the phases of most intense humanitarian emergency, in the absence of a suitable interventionist response by states and international institutions, a maximal effort should be made to support transnational and grassroots initiatives, especially those, with a halcyon background and an orientation in reconciliation, in a manner that does not compromise on the sovereign independence or political or territorial integrity of the State.

⁶³It's that stage in an escalated Conflict, when neither protagonist perceives a victory, nor do any of them want to concede and relinquish. Both sides see the holding situation, as one of diminishing returns but would rather prefer a transformative solution proposed from the outside, than be seen as climbing down, of their own accord. The costs of persisting with the conflict outweigh the costs of stepping-out of it, and this stage is characterised as one of a Mutually Hurting Stalemate.

Lastly, critical geopolitics is needed, to convince those who exercise control over decisions, pertaining to the allocation of resources, that investments in conflict prevention, human rights (including economic, social, and cultural, as well as civil and political), and conflict-resolution, are conducive to global stability and prosperity.⁶⁴

To sum up, according to the most consensual and concurred conceptualization of what constitutes a humanitarian intervention, at least four situations are disqualified, by the concept of humanitarian intervention, even if such operations are motivated by humanitarian concerns; viz., actions involving the use of armed force on the invitation of the lawful government including those insertions based on agreements; actions which occur within the framework of a traditional peacekeeping operation of the United Nations; military operations which are undertaken by a state, in order to rescue its own nationals abroad from an imminent danger to their lives and/or serious injury; and any coercive action(s) not involving use of armed force.

However, what's gleaned, from the etymological understanding and epistemological analysis in this Chapter, is that all interventions are not humanitarian, just as any intervention cannot be humanitarian, either. Decoding the motives/intent, process/methodology, and outcomes/objectives, is key to an understanding the conceptual and operative pivot that has happened, in the Post-Cold War era, particularly during the 1990s. The endeavour during the ensuing Chapter, segues, with a detailed interrogation of the theoretical constructs, spanning an examination of the perfunctory realist traditions and liberalist axis on the one hand, to the focussed explication of Social Constructivism and Cosmopolitan Consequentialism strands within the normative school, on the other, facilitating a holistic perspective on the shaping of the transforming discourse on humanitarian intervention, through its myriad contradictions, brought to the fore, by the empiricism of the quadrant of 1990s Case Studies, in selection.

⁶⁴Richard Falk, 'The Complexities of Humanitarian Intervention: A New World Order Challenge', *Michigan Journal of International Law*, vol. 17, no. 2, 1996, p. 491.

CHAPTER III

UNDERSTANDING 'NORMATIVITY' IN HUMANITARIAN

INTERVENTION – THEORETICAL CONSTRUCTS AND COGNITIVE

FRAMEWORKS

Humanitarian Intervention, despite its positive rhetorical connotation, has become one of the key causes of contention and controversy, in contemporary international relations. Each of the issues inherent in its debate, from human rights to state sovereignty, and from the dialectic duality of order vis-à-vis justice, to the role of the United Nations and the reposed powers-that-be, constitute seminal concerns in itself. Taken together, these issues create an almost limitless scope, for disputatious discussion. This capacity for dissonance, is hardly surprising, since, the fundamental question that posits, viz., when is it right to use force to protect those suffering in other states?, is laced with intense subjectivity, that interrogates humanity's moral compass, challenges the composition of the international political system, and questions the duties and responsibilities, of all major international actors.

There is little gainsaying that, no single theoretical construct or strand of ideated thought, can explicate the convolute and cross-cutting phenomenon of Humanitarian Intervention, the way it is under examination, within this thesis, viz., in terms of the militarized coercive hue of it. With the crisis of the 1990s, the scholarship on humanitarian intervention, produced animated, high-octane and trenchantly variegated explanations, from a slew of theoretical perspectives, in decoding and rationalising, as to why states either undertake or become witting participants, in such armed humanitarian interventions. With different ontological and epistemological foundations, these theoretical constructs, proffer the most compelling and powerful explanations and interpretations, as to why states choose to intervene or abstain from intervention, in such arduous situations. Notwithstanding, these theoretical strands also throw-up contradictions, in explicating and dropping indications about state behaviour towards such humanitarian interventions.

It is widely surmised that the Post Second World War (herein referred to as WWII) phase in human history has coincided with a salutary concern for human rights, such that, the potential abuse of rudimentary rights, fundamental freedoms and liberties considered alienable, constituted a casus-belli, prosecutable through rationalized intervention, from the extant. However, the irrepressible duality that is an invariably quintessential feature of

international statecraft has tended to prevail, such that, the aforesaid mentioned concern for human rights was tempered in smear by the no less sacrosanct regard for sovereign rights of the State, thereby undercutting interventionist attempts.⁶⁵ Fundamental to decoding quandary-of-a-dilemma, is the entailed demystification of methodologies constitutive of myriad schools of international relations, each swaddled in variegated comprehensions of the dialectic equation and relationship of normative behaviour. This said, it remains cliché that, the principal fault-line of discourse underpinning the debate over normativity and sovereign disposition, is to be found in the dichotomous explication of ‘Rationalism’ and ‘Constructivist’ thought framework processes.

The Chapter coalesces itself, around three sequential segments, which purportedly seamlessly segue into each other. At the outset, it behoves a bottom-up comprehension of the Rationalist cogitated perspective, as it impinges upon the duel of norms and sovereign demeanour, showcasing the conceptual limitations and deficiencies inherent, in the dilatory expound, of the stated strand of critical thinking. Thereafter, in pursuance of familiarization with the idea of holistic Constructivism, which embodies within it the ecosystem of a ‘norm life cycle’, the attribute-element of normativity is sought to be injected into examining discussion, squared-up against the Constructivist frame of cognitive criticality, through appraisal and appreciation of the contribution of ideation in constituting of one’s identity, benchmarked against its attendant behavioural pattern, as also the study of the actor-structure axis which conditions the demeanour of myriad states on the one hand, which in turn moulds and chaperons the accosting international system, on the other.

DECODING ‘RATIONAL-CHOICE’: THEORIZING ON HUMANITARIAN INTERVENTIONISM

Through the breadth of the bipolar Cold War, the explication for comprehending state disposition, emanated from a predominant and principal focus on ‘Rational-Choice’ theorizing, wherein the focus of such a theoretical construct, was on material ontology, which left the study of norms, languishing in the background. In stark contrast, the demise of the bipolar schema in world affairs, propelled the revived and renewed evince of interest in ideation within transpiring, coupled with a befitting and comporting emphasis, on the impinging effect of the rules of normativity upon state demeanour. This renewal can be partly attributed, to the advance of the Constructivist theoretical construct, regarding the emergence

⁶⁵Ian Hurd, ‘Constructivism’, in C. Reus-Smit & D. Snidal, (eds.) *The Oxford Handbook of International Relations*, (Oxford: Oxford University Press, 2008), p. 300.

and impact of norms in international relations. This advance has been so considerable in the post-cold war era that, constructivism is now predominantly concerned with questions of how, when, and the why, rather than the consideration, of whether norms at all matter.

Rationalism has long been the dominant paradigm in international relations, and continues to occupy the central role, if not being the point of reference, in international relations erudition. The pervasive and permeating prevalence of Rationalism in training methodological techniques ensures that, the very tenor and texture of theorizing and theoretical analysis continues to enjoy a deep embedding, within Rationalist assumptions. However, the ideational turn of the 1980s, which intensified through the 1990s and into the 21st century, popularly christened as ‘the Constructivist turn in international relations’, has helped to rupture the trajectory and pivot the conceptual discourse, somewhat away from the central locus of the neorealist/neoliberal debate, though despite this, Rationalism has remained dominant.⁶⁶

Realism and its premise stands argued and contended through its espousing adherents of rationalists, in that, the all-pervading anarchic system, bereft of an international hegemon, plunges sovereign states into a self-help mode, indexed to a survivalist impulse, within a dog-eat-dog hue of statist syndrome. Neorealism perceives the upshot of such all permeating contrempts through the prism of inexorable mistrust and endemic insecurity, such that, sovereign states can ensure their head above water, simply through optimizing power vis-à-vis peers and adversaries alike. Hence, the concept of Power, and factors relating to the currency of power, are the observable data, with which to analyse the international system, with the distribution of material capabilities among states, serving as a fundamental underpinning for understanding world politics. For realists, the existence of norms is of piffling importance, as they do not impinge, on the behaviours of states. Put simply, states will comply with norms, when it is in their interests to do so, and will blissfully violate them, when compliance is not in their interest. Writing in the 1930s, E. H. Carr seemed to suggest that, norms are causally irrelevant, when he argued that supposed universal principles of morality, are simply a reflection of the interests of dominant powers. Some of the most heated debates between Realists and their critics which took place in the two decades immediately following WWII, concerned whether states were bound by considerations of moral norms, or

⁶⁶Jeffrey Checkel, ‘The Constructivist Turn in International Relations Theory’, *World Politics*, vol. 50, no. 2, 1998, p. 329.

whether the pursuit of the 'national interest' was an overriding moral obligation. Realists such as Hans Morgenthau, argued that, in the absence of a higher sovereign with coercive power to compel compliance with norms, statesmen must necessarily pursue the national interest, "for if he does not take care of the national interest, nobody else will, and if he puts (the state's) security and liberty in jeopardy the cause of liberty everywhere will be impaired."⁶⁷ Consequently, realists inform us, that states cannot afford to comply with international norms, unless such action happens to coincide, with the overriding political and moral duty to pursue the national interest, described as the singular lodestar, flag-bearer of thought, and touchstone for action. However, Realists do acknowledge that, we should not deny that statesmen and diplomats are moved by anything but considerations of material power alone, enlisting that, states refrain from doing certain things on moral grounds, even though it would be expedient to do them. In recent years some realists have accepted the inevitable impact, which norms have on state behaviour, and have attempted to integrate this reality, with a Realist theory of power-politics.⁶⁸

Neoliberalism, for its part disabuses the notion that, an intrinsically anarchic world mandates an invariable focus on comparative quotients of power indexes, while equally disavowing that, the global order is forged in a fiendish zero-sum propositional paradigm. Instead, states remain sentient of their standing within the stratified global system, and harbour a deep-seated interest in securing their pecking order position, within the said system, through maximizing beneficence, regardless of the proclivities and propensities of other states, within the system.⁶⁹ To this end, the phenomenon of convergent cooperative disposition between states and through the good offices agency of institutions within the international relations firmament, manifest themselves through the panoply of iterative interactions, reciprocated in a like-for-like manner, potentially in the mutually enlightened self-interests of each other.⁷⁰ Epochal enough is the fact that, the attributive facet of cooperation ensues, as states perceive the greater collective good as transcending their parochially delineated interests within the power-optimizing context. Despite these divergences, both theories nevertheless, stress the 'self-interested' identity of the State,

⁶⁷Hans Morgenthau, 'Another "Great Debate": The National Interest of the United States,' *The American Political Science Review*, vol. 46, no. 4, 1952, p. 987.

⁶⁸Ibid, pp. 224-25.

⁶⁹John Hobson, *The State and International Relations*, (Cambridge: Cambridge University Press, 2000), p. 98.

⁷⁰Alexander Wendt, 'Anarchy is What States Make of It: the Social Construction of Power Politics', *International Organisation*, vol. 46, no. 2, p. 392.

even as either theory, be it relative or absolute gains, power or welfare, takes the phenomenon of the self-interested state, as a fountain-head, for theorizing.

It is further contended that since states as unitary actors within the international milieu, are beholden to accomplishment of interests that stand exogenously determined, it implies that, they encounter one another through the promenade of a pre-ordained medley of predilections. Hence, states pursue what may be termed as a 'logic of consequences', where the international system is a 'strategic domain', and wherein states calculate 'ends-and-means', to maximise or optimise their given interests, but where the 'given interests' are nothing other than maximising power and material utility. Such an approach therefore makes the 'if-then' causative analysis possible, by presupposing the self-interested nature of the state, so as to find patterns that connect certain situations or conditions with subsequent behaviour.⁷¹ However Rationalism, by exogenously presupposing the material identity of the state, can be seen as a form of 'methodological individualism', according to which the actor is ontologically prior-to, and can be studied, independently-of, social structures'. An exogenous ontology of state identity and interests suggests that, identity and interest are largely independent, from the structures found within the international system, and consequently norms are interpreted, as merely 'the intervening variable or intermediate-variable, mediating between interest and political outcomes, with little or no independent explanatory power'.⁷² They do not shape actors' identities or interests, but influence strategic choices, and enable, sanction or prevent certain actions. With regard to the recognition of norms, neorealism and neoliberalism diverge, such that the former places the least amount of causal significance to norms, as in that, norms are of trivial importance, in explaining world politics; an epiphenomenon of the interests of the powerful. According to neorealism, strong states comply, because norms prescribe action that they would take anyway; weak states comply, when failure to do so would result in sanctions, by strong states. In either case, it's the power and interests doing the talking, not the norms.⁷³

Neoliberalism, borne of the view that states gain more from cooperation, create and maintain regimes to facilitate collaboration, hence, end up according a more enduring and

⁷¹Diana Panke & Thomas Risse, 'Liberalism', in T. Dunne, M. Kurki and S. Smith (eds.) *International Relations Theories: Discipline and Diversity*, (Oxford: Oxford University Press, 2007), p. 92.

⁷²Annika Björkdahl, 'Norms in International Relations: Some Conceptual and Methodological Reflections. *Cambridge Review of International Affairs*, vol. 15, no. 1, 2002, p. 11.

⁷³Thomas Ward, *The Ethics of Destruction: Norms and Force in International Relations*, (New York: Cornell University Press, 2001), p. 8.

significant influence to norms. Despite the more significant role from the standpoint of neoliberals, norms still, as with realists, are related to calculations of self-interest. Norms facilitate market efficiency, are by definition compatible with interests, and are followed, because the benefits outweigh the costs. Ultimately Rationalism sees norms, as being a product of states' interests, interests that are predetermined and ontologically prior, to norms or other structural elements in the international system. Norms do not affect actual individual interests, merely impact behaviour and the strategies to attain them.⁷⁴

It is the contention of this thesis that, in analysis of humanitarian intervention at least, the rationalist model does not offer the best fit. Rationalism as an analytical method, suffers from shortcomings, in the explanation of the full range of real-life behavioural and normative phenomena. By explaining the interests of states, in exogenous terms, Rationalism can only account for behavioural change which is marginal, and which is fundamentally related to material considerations. In any given situation, behaviour is reduced to strategies of utility maximisation, viz., to the 'logic of consequences'. With no impetus for change, except for the interplay of predetermined state interests, the analysis of the international system is rendered, exceptionally static, outside the narrow confines, concerning materialism. To Constructivists, humanitarian intervention looks odd, from conventional perspectives on international political behaviour, because, it does not conform to the conceptions of interest, which they specify. None of these Neorealist or Neoliberal approaches, provides an answer to the question, as to what interests are intervening states pursuing?

It might be instructive and moot to observe the dossier of the US and UN's intervention in Somalia during 1992-1994. From the get-go, the narrative that conditioned the template for intervention was set against the backdrop of a war-ravaged country, wracked by a confluence of aggravating problems, ranging from an emaciating famine, internecine warfare unleashed by the labyrinth of self-styled militias and warlords, and an insurrectionist struggle to boot, amidst an enveloping chaotic and degenerating concourse of circumstances. It was averred that the US intervention at the behest of the UN was essentially to mitigate the situation, undertaken, despite the apparent dearth of any sinew of strategic or material national interest being at stake.⁷⁵ Realism is conspicuous by its hamstrung inability to

⁷⁴Ann Florini, 'The Evolution of International Norms', *International Studies Quarterly*, vol. 40, no. 3, 1996, p. 365.

⁷⁵Luke Glanville, 'Somalia Reconsidered: An Examination of the Norm of Humanitarian Intervention', *International Affairs*, vol.77, no. 1, p. 115.

explicate the justification for the US to have commandeered such a militaristic intervention, for ostensible humanitarian purposes, in a treacherously forsaken place, as far removed as Somalia. It begs the question that if rationalism is unable to put the finger on the pulse in explaining the motivations for interventions in theatres devoid of apparent strategic interests, then how is one to account for a norm of humanitarian intervention or indeed for a norm lacking material substance? To questions of whether such a norm exudes a specific configuration of interest or a particular locus of power, and whether there is any opportunity cost to be borne via such an action, and similarly, what impels states to conform to normative behaviour, when ranged against their interests, it is often argued that norms are 'rationalisations', masking actions genuinely motivated by material interests; a 'Trojan Horse' of sorts, for the intervener's material gain. Although reasons can be adduced in support of US action in Somalia, as in arguing factors of corraling spheres of influence, the imperative to preserve national primacy during a time of unipolar preponderance within the international system, besides access to oil supplies that were flowing albeit in circumscribed quantities and the US control of the port of Berbera, which of course had only recently been relinquished. Hence it may be concluded that 'humanitarianism was at best roiled with considerations of national interest'.⁷⁶

However, even if it is the case that, norms such as humanitarian intervention are mere rationalisations, it still leaves Rationalism, incomplete. Drawing on established norms to justify behaviour is a viable strategy, only if, that behaviour is in some measure, consistent, with the proclaimed norms. In Somalia, the US might have been interested in securing oil, but nonetheless, it did engage in humanitarian behaviour. Even if the actor is not in fact motivated, by any of the principles he professes, he will nevertheless be obliged, to behave in such a way, that his actions remain compatible with the claim that, these principles genuinely motivated him. If the actor has to at least be appearing to adhere to the norm, and it is by no means certain, that it's just an appearance, then, the norm still has causal power.⁷⁷ If that norm is non-material in nature, then clearly the international system has non-material characteristics, which are not accounted for by Rationalism. Clearly there is more to norms and behaviour than just materialism and using Rationalism as a method of analysis will

⁷⁶David Gibbs, 'Realpolitik and Humanitarian Intervention: The Case of Somalia', *International Politics*, vol. 37, no. 1, pp. 41.

⁷⁷Quentin Skinner, 'Some Problems in the Analysis of Political Thought and Action', *Political Theory*, vol. 2, no. 3, 1974, p. 292

therefore fail to capture the entire essence of humanitarian intervention, leading to what has been termed, the theory's explanatory poverty.⁷⁸

'CONSTRUCTIVISM' IN HUMANITARIAN INTERVENTIONISM

It must be emphasized at the very outset that, Constructivist international relations theory, is not a single unified theory, however, interrogation of the range of different constructivist approaches, is beyond the scope of this dissertation. The 'Constructivism' referred to in this dissertation are the 'conventional constructivists,' as distinct, from the post-modern epistemology of critical theory. While, even within this 'conventional' range of constructivist literature, there is a broad range of variant contentions, an underlying argument can nevertheless be found. Conventional constructivism is a movement with great ontological and epistemological variety, yet, there is an underlying contention that, values and ideas impact upon international relations; that identities, interests and possible actions, are socially constructed; and that, systems, norms, and relationships can change.⁷⁹ Constructivism asserts that, human interaction is shaped, not only by material factors, but, also by ideational factors. The most important ideational factors for a society are 'inter-subjective' beliefs, i.e., shared beliefs constructing the identities and interests of actors.⁸⁰

In fact, the emergence of constructivism in the United States in the 1990s was paralleled, by the rejuvenation of the English School in the United Kingdom and across Europe, arguing that, states exist in society, with each other. Hence, considerable similarities can be discerned, between the English School theory and Constructivist theorized thought, in the sense that, both find the rules of interaction and the interests of actors, to be socially constructed, rather than being a given; "both interrogate the meaning of the international system/society according to the inter-subjective practices, through which it is constituted".⁸¹ Where Rationalism sees the structure of the international system, and its norms, as being dictated by the interests of agents, Constructivism sees a mutual constitution of structure and agent. The thesis advances the contention, that, a Constructivist approach can

⁷⁸Sarka Matejkova, 'Establishing the Norm of Humanitarian Intervention in International Relations', *Central European Journal of International and Security Studies*, vol. 2, no. 2, 2008, p. 77.

⁷⁹Vaughn P. Shannon, 'Norms Are What States Make of Them: The Political Psychology of Norm Violation,' *International Studies Quarterly*, vol. 44, 2000, p. 293.

⁸⁰Martha Finnemore and Kathryn Sikkink, 'Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics,' *Annual Review of Political Science*, vol. 4, 2001, pp. 391-93.

⁸¹ Timothy Dunne, 'The Social Construction of International Society,' *European Journal of International Relations*, vol. 1, no. 3, 1995, p. 384.

overcome the so-called ‘explanatory poverty’ of Rationalism, providing a fuller analysis of humanitarian intervention, as a norm and as behaviour. Rationalism is not concerned as to where interests emanate from, just that, interests are simply interests, to be accomplished through requisite instruments of state policy, out of the tool-box, available to policymakers. Constructivists on the other hand, contend that, the interests of the actor are formulated, not exogenously, but endogenously. So then, where do such interests, come from?

In the Constructivist approach, ‘Identity’, is at the heart of interest conception and shaping and behaviour is a function of it too. For Constructivism, the international system is the embodiment of a society reposed of the constellations of states, where structures take the form of communitarian relationships and partake in collectivised epistemology. Therefore the structure is a ‘constitutive realm’ and ‘the site that generates actors as knowledgeable social and political agents, the realm that makes them who they are. It is through reciprocal interaction, that, we create and instantiate the relatively enduring social structures in terms of which we define our identities and interests.⁸² Put simply, norms, as a significant manifestation of social relationships and shared meanings, not only regulate state behaviour, but can also constitute the very interests and identity, that, determine state behaviour. The social environment determines how to behave and what interests and identity to claim. In contrast to Rationalism, actors follow the ‘logic of appropriateness’ over ‘logic of consequences’, where behaviour is not strategically dictated by self-interest, but rather by identities and norms.⁸³

With no prior material assumptions, Constructivism, unlike Rationalism, does not limit the conception of the structure, and subsequently norms, in material terms. An endogenous social theory, Constructivism contends that, the values of the physical world are socially emergent, having no meaning beyond what the actors develop, within an inter-subjective social context. Ideas shared between actors, are thus the basis of meaning, not material things. The difference is in inter-subjective understandings, based on non-material ideas. In this case the idea is friendship; a shared meaning and understanding socially constructed, through repeated interaction.⁸⁴ This is not to say that material weapons or currency are unimportant, rather, that their importance is based on the ideas that constitute

⁸²E. Adler, ‘Seizing the Middle Ground: Constructivism in World Politics’, *European Journal of International Relations*, vol. 3, no.1, 1997, p. 324.

⁸³Paul Viotti, and Niilo Kauppi, *International Relations Theory*, (London: Longman, 2010), p. 287.

⁸⁴Ted Hopf, ‘The Promise of Constructivism in International Relations Theory’, *International Security*, vol.23, no. 1, pp. 172-73.

them. It does not rule material power out, in fact, rules in considerations and dimensions, beyond just that.

A central premise of Constructivism is that, the relationship between actors and structure is not a fixed and stable fact, rather a mutually constitutive and continuous process. In the same way that the structure constitutes the actor, thereby affecting their identities, interests and behaviour, the actors can constitute the structure. The social structure is made up of actor interactions; therefore, the actor agency can change the rules of the game. Of course such a reading of international relations presents an obvious problem. If actors constitute the structure which in turn constitutes the actor, ad infinitum, then how does original identity develop? Where can change, such as an emerging norm of humanitarian intervention, come from? With no other determining factors, Constructivism faces the same criticism as Rationalism offers an overly static conception of the international system, providing no clue as to how agents or structures change. This uncertainty can be overcome by reference to the internal dimension of state identity. Holistic Constructivism emphasises that, the socialization processes internal to a state can change the state's identity and interests, independently of international interaction. This approach represents a unified analytical perspective, that, treats the 'domestic' and 'international', as two faces of a single social and political order'. From this perspective, the domestic identity as well as shared norms of international society has causal effects on states' interest and behaviour.⁸⁵ Interplay of both domestic and international structures combines to account for the identity of an actor. Where Rationalism struggles to account for the non-material norms and behaviour, associated with humanitarian intervention, Constructivism can find explanations in the social and ideational dynamics at play, within the international system, between actors and structure. By turning to a detailed understanding of the norm 'life cycle', these mutually constitutive dynamics are elaborated and undergoing, in more practical terms.

Employing both theoretical and empirical techniques, Constructivists have argued that, norms do have independent explanatory power, and are not simply reflections of hegemonic state interests, as some rationalists have claimed. For Constructivists, norms are the expectations held by many actors, which serve to define the actors, their espoused interests, and the possibilities for disposition, on those interests. For Constructivists, norms reconstitute interests, and define what policy options are legitimate, by circumscribing some

⁸⁵Dale Copeland, 'The Constructivist Challenge to Structural Realism', *International Security*, vol. 25, no. 2, 2000, p. 199.

and promoting others. They not only constrain actors; they constitute the actors themselves, and enable action. Norms are not simply an ethical alternative to or a constraint on self-interests; system level norms play an explanatory role.⁸⁶The shifting importance of contending global norms offers a theoretical explanation of interest reformation. Constructivism problematizes identities and interests while realists and neoliberals take them for granted. For constructivists, norms are widely accepted patterns of behaviour, even averred as dominant practice or behaviour. Constructivism suggests a distinction, between '*normative beliefs*', which refers to appropriate behaviour, and '*behavioural norms*', which refers to dominant behaviour.⁸⁷The term 'norm', shall not necessarily identify actual behaviour; it simply refers to notions, of what appropriate behaviour ought to be. There are countless normative beliefs, which do not have sufficient strength or acceptance, to effect dominant behaviour. Moreover, there are always caveats and qualifiers, to dominant behaviour. Constructivists have shown that constant repetition of an act, may not necessarily lead to the creation of a norm, while a norm may even originate, as a result of a single precedent. So long as we are clear that norms can vary in their strength, acceptance, and causal impact, we need not feel compelled to reserve the term 'norm', for those behaviours that have become sufficiently dominant or typical. What's moot is to decipher and decode, as to which norms matter and which norms do not.⁸⁸

This said, there are four key aspects, which distinguish one norm from another, viz., the nature of the norm's injunction; the content of the norm; the strength of the norm's causal impact on state behaviour; and the nature of the functional impact of the norm, upon state behaviour, respectively. For constructivists, international norms influence state behaviour both in a 'regulative' sense, whereby state decision-makers draw conclusions about 'whether a certain sliver of actions are required, forbidden, or allowed, and, in a 'constitutive' sense, shaping states' identities and interests.⁸⁹It has become common to describe regulative norms, as serving as road maps that suggest legitimate and effective policy choices, described by former US Secretary of State James Baker (III), as "rules of the road". Norms regulate or constrain behaviour, by altering the consequences of a given behaviour, and thereby forcing a

⁸⁶Audie Klotz, 'Norms Reconstituting Interests: Global Racial Equality and U.S. Sanctions Against South Africa', *International Organisation*, vol. 49, no. 3, 1995, p. 460.

⁸⁷Gregory A. Raymond, 'Problems and Prospects in the Study of International Norms', *Mershon International Studies Review*, vol. 41, 1997, p. 217.

⁸⁸Jeffrey W. Legro, 'Which Norms Matter? Revisiting the "Failure" of Internationalism', *International Organization*, vol. 51, no. 1, 1997, p. 33.

⁸⁹Annika Bjorkdahl, 'Norms in International Relations: Some Conceptual and Methodological Reflections', *Cambridge Review of International Affairs*, vol. 15, no. 1, 2002, p. 16.

recalculation, of how to best achieve given interests.⁹⁰ While accepting that, norms regulate and constrain the behaviour of actors, however, they also contend that, the effects of norms can reach deeper, since they are shared understandings, which constitute the identities and interests of the actors themselves. Constitutive norms on the other hand, are said to create new actors, new interests, and new categories of action, seen as directly related to collective identities, and therefore interconnected, with the national interests of states. This understanding of political action, as a product of rules, roles and identities, stipulating appropriate behaviour, is described as the “logic of appropriateness”. However, the distinction between regulative and constitutive norms can be made fuzzy and nebulous, by the justifications of statesmen, when complying with a norm.⁹¹ Statesmen will often discuss the impact of norms in a constitutive sense, regardless of the true function of the norm. A statesman is more likely to argue that, it is in the state’s interest to comply with a norm, rather than acknowledge that, action in pursuit of the material self-interest of the state has been constrained, by a norm. When states choose to respond to crises, statesmen do not claim that, intervention was not in their interest and that action was prescribed by the norms of international society. Justification for action is inevitably couched, in terms of a national interest to intervene in order to promote, for example, the nation’s values or security, or the stability of the international system.

DEFINING ‘NORMS’

Since the advent of the nation state system in 1648, sweeping changes have taken place in the broadly understood standards of international behaviour. Aggression across recognized national borders, once a standard tool of state policy, now evokes condemnation. The meaning and utility of this definition, however, is dependent on the theoretical lens, through which it is viewed. A useful early definition of an international norm, views it only ‘as a rule’, that states engage in, encompassing all observed patterns of behaviour. Norms have also been defined as standard behaviour with the qualifier that actors are often punished, when seen to be violating the norm. However, it leaves in its wake, much analytical fuzziness, since it would seem to include all behaviour, which is clearly driven by short-term material incentives, thereby conflating behaviour determined by simple power

⁹⁰James G. March and Johan Olsen, ‘The Institutional Dynamics of International Political Orders’, *International Organization*, vol. 52, 1998, pp. 947-8.

⁹¹Jeffrey Checkel, ‘International Norms and Domestic Politics: Bridging the Rationalist-Constructivist Divide,’ *European Journal of International Relations*, vol. 3, no. 4, 1997, p. 474.

relationships, with that, which is normatively girded. The whole point of the norms literature is to investigate what has too often been left out of theories of international relations, viz., as to how it is that states determine their interests, and the role of social construction in shaping behaviour. By defining “norms”, as standards of behaviour and not just behavioural regularities, two important dimensions emerge. Firstly, norms are about behaviour and not directly about ideas. A refined definition can be found in Krasner’s description of norms, as “standards of behaviour, defined, in terms of rights and obligations”, which are a component of overarching regimes network, defined as “principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area”, that serve to “constrain immediate, short-term power maximization”.⁹²

However, even this definition does not go far enough, since, it confines the dynamic and mechanics of normativity, to the promenade of certain specific regimes. Finnemore decodes norms, as “a set of inter-subjective understandings, readily apparent to actors, that makes behavioural claims on those actors”.⁹³ Because they are inter-subjective or shared, they are not mere individual idiosyncrasies. Instead, they leave broad patterns of the sort that social science strives to explain. These patterns matter, because, once embedded in social institutions, they act like structures, shaping states’ behaviour. Besides, this definition underscores that, the essence of the distinctiveness of a norm, is the sense of “ought”. This sense of ‘ought-ness’, alluding to an apparent obligation, of how an actor should behave, can apply either to the individual actor or to others who witness, and assess the actor’s behaviour.⁹⁴ The most important characteristic of a norm is that, it is considered a legitimate behavioural claim. No matter how a norm arises, it must take on an aura of legitimacy, before it can be considered a norm. Norms are obeyed, not because they are enforced, but because, they are seen as legitimate.

GENESIS AND GENEALOGY OF NORMS – NORMS AND THEIR EMERGENCE

Although little theoretical work has focused exclusively, on the process of “norm building”, still, most accounts of norm genesis, emphasize, the attributes of human agency, indeterminacy, chance occurrences, and propitious events. Generalizing from these accounts, two elements seem core, in the successful creation of most new norms; the profile and role of norm-entrepreneurs and organizational platforms, from which such entrepreneurs act. Norm

⁹²Stephen Krasner, *International Regimes*, (Ithaca, NY: Cornell University Press, 1983), p. 3

⁹³Martha Finnemore and Kathryn Sikkink, ‘*International Norm Dynamics and Political Change*,’ *International Organization*, vol. 52, no. 4, 1998, p. 896.

⁹⁴*Ibid*, p. 897.

influence may be understood, as a three-stage process, where, the first stage is “norm emergence”; the second stage involves, broad norm acceptance, which is termed as “norm cascade”; while the third stage, involves “norm-internalization”.

In the on-setting stage of ‘Norm Emergence’, norms find proactive canvassing through change agents, harbouring cogent understandings about what constitutes acceptable behavior within the milieu of states. Such entities go by the nomenclature of ‘Norm Entrepreneurs’, and are vital to the sunrise of norms, since they seminally contribute to gravitating mind-space to issues, or engender issues requiring attention, through availing of language and idioms, that identify, interpret and even exaggerate them too. Through the medium of articulation of such collectivized and shared understandings and the crafty construction of cognitive phraseology, such ‘Norm Entrepreneurs’ help resonate with the broader societal consciousness, which serves to such constructions being embraced as new lingua of discussion. The characteristic mechanism, of the first stage of Norm Emergence, is persuasion by Norm-Entrepreneurs. Norm entrepreneurs attempt to convince a critical mass of states called norm leaders, to embrace new norms.

The procreation of Norms can take two distinct trajectories, viz., through the agency of individuals as Norm Entrepreneurs, or through the institutional corridors of organizational platforms. Regardless of their emanation, norms ought to be canvassed, lobbied for, and duly leveraged by such individual or institutional entities acting as change-agents, facilitating the spur of requisite behaviour, within the wider community, society, and constituencies beyond. It’s invariably the case with issues of humanitarian empathy and concern that, the traction of the said norm depends upon the pressure exerted by the norm-entrepreneur which if successful in its advance, could lead to meaningful mutations in policies or stances, in support of humanitarian purposes. It merits mention here that, norm entrepreneurs are expected to go the whole hog on showcasing the normative belief or expectation, through running the entire gamut of identification of the problem, proffering panaceas as solution, and taking the normative development to its logical conclusion.

No matter who the norm entrepreneur is, for the norm to find traction and persuasion at the global level, it needs heavy-lifting through some kind of an organizational platform. These may be organizations that are constructed, specifically for the purpose of advocating a particular norm, or to peddle and purvey a wider set of interests. These organizations rely on the influence of expertise and information, to mutate the behaviour of ‘Critical State’ actors. Norm entrepreneurs, and the organizations they inhabit, usually need to secure the support of

states, to endorse their norms and make socialization a part of their agenda. They are rarely able to coerce state participation, which reflects the state-centric nature of the international community, and calls into question the agency or such norm-promoting organizations. In order to explain why some norms thrive and other die, an examination of the conditions that are required to foster ‘norm cascade’ or the global socialization of a normative value is necessary.

Norms do not appear out of thin air; in fact, they are actively built by agents, having strong notions about appropriate or desirable behaviour, in their community.⁹⁵The assertion is consistent with the description that Ethan Nadelmann gives of “transnational moral entrepreneurs”, who engage in “moral proselytism.”⁹⁶ Legal theorist Lessig uses the term “meaning managers” or “meaning architects”, to describe the same kind of agency, in the process of creating norms, and larger contexts of social meaning.⁹⁷ The construction of cognitive frames is an essential component of ‘norm entrepreneurs’ political strategies, since, when successful, the new frames resonate with broader public understandings, and are adopted as new ways of talking about and understanding issues. In constructing their frames, norm-entrepreneurs face firmly embedded alternative norms and frames, which create alternative perceptions, of both appropriateness and interest. In the case of the Red Cross, Dunant and his colleagues had to persuade military commanders, not to treat valuable medical personnel and resources they captured, as spoils of war, but to be treated, as they saw fit. In other words, new norms never enter a normative vacuum, but instead emerge in a highly contested normative space, where they must compete with other norms, and perceptions of interest. This normative contestation has important implications, for our understandings of the ways, in which the “logic of appropriateness”, relates to norms. Efforts to promote a new norm take place within the standards of “appropriateness”, as defined by prior norms. To challenge existing logics of appropriateness, activists may need to be explicitly “inappropriate”. Deliberately inappropriate acts, such as organized civil disobedience,

⁹⁵For instance, the prevailing norms that medical personnel and those wounded in war be treated as neutrals and non-combatants are clearly traceable to the efforts of one man, a Geneva based Swiss banker, Henry Dunant. Dunant had a transformative personal experience at the battle of Solferino in 1859, and helped found an organization to promote this cause, what, in the fullness of time, became the globally recognised and acclaimed International Committee of the Red Cross (ICRC), of course legislated through an international treaty, viz., the first Geneva Convention.

⁹⁶Ethan Nadelmann, ‘Global Prohibition Regimes: The Evolution of Norms in International Society’, *International Organization*, vol. 44, no. 4, 2009, p. 481.

⁹⁷Lawrence Lessig, ‘The Regulation of Social Meaning’, *University of Chicago Law Review*, vol. 62, 1995, p. 952.

especially those entailing social ostracism or legal punishment, can be powerful tools for norm entrepreneurs, seeking to send a message and frame an issue.

Thus, at this emergent stage of a norm's life cycle, invoking the 'logic of appropriateness' to explain behaviour is complicated, by the fact that, 'standards of appropriateness', are precisely, what is being contested. Given the costs of inappropriate action, and many of the persuasive tools they use, one has to wonder, as to what could possibly motivate norm entrepreneurs. Obviously the answer varies, with the norm and the entrepreneur, but for many of the social norms of interest to political scientists, it is very difficult to explain the motivations of norm entrepreneurs, without reference to empathy, altruism, and ideational commitment. Empathy exists, when actors have the capacity for participating in the other's feelings or ideas. Such empathy may lead to empathetic interdependence, where actors "are interested in the welfare of others for its own sake, even if this has no effect on their own material well-being or security". Altruism exists, when actors actually take action designed to benefit another even at the risk of significant harm to the actor's own well-being. Kristen Monroe argues that the essence of altruism is a "shared perception of common humanity, a very simple but deeply felt recognition that, we all share certain characteristics and are entitled to certain rights, merely by virtue of our common humanity."⁹⁸

Ideational commitment is the main motivation, when entrepreneurs promote norms or ideas, because, they believe in the ideals and values embodied in the norms, even though the pursuit of the norms may have no effect, on their well-being. Of course, many norm entrepreneurs do not act as much, against their interests, as they act in accordance with a redefined understanding of their interests. Sometimes, these platforms are constructed specifically for the purpose of promoting the norm, as are many nongovernmental organizations (NGOs such as Greenpeace, the Red Cross, and Transafrica and their ilk), and the larger transnational advocacy networks, of which these NGOs become a part (such as those promoting human rights, environmental norms, and a ban on land mines). Often, however, entrepreneurs work from standing international organizations that have purposes and agendas, other than simply promoting one specific norm. Those other agendas may shape the content of norms promoted by the organization significantly.

⁹⁸Kirsten Monroe, *The Heart of Altruism: Perception of a Common Humanity*, (New Jersey: Princeton University Press, 1998), p.18.

The United Nations enjoys distinctive structural features that, influences the kinds of norms it promulgates, about such matters as decolonization, sovereignty, and humanitarianism. One prominent feature of modern organizations and an important source of their influence, in particular, is their use of expertise and information to change the behaviour of other actors. Expertise, in turn, usually resides in professionals, and a number of empirical studies document the ways that, professional training of bureaucrats in these organizations, either helps or hinders the promotion of new norms, within standing organizations. Whatever their platform, norm entrepreneurs and the organizations they inhabit, usually need to secure the support of state actors to endorse their norms, and make norm socialization, a part of their agenda, wherein, different organizational platforms provide different kinds of tools, for entrepreneurs to do this. International organizations like the United Nations, though not tailored to norm promotion, may have the advantage of resources and leverage over weak or developing states, whom they seek to convert, to their normative convictions. Networks of NGOs and intergovernmental organizations (IGOs), dealing with powerful states, however, are rarely able to “coerce” agreement, to a norm, they must persuade. They must take what is seen as natural or appropriate and convert it into something, perceived as wrong or inappropriate. This process is not necessarily or entirely in the realm of reason, though facts and information may be marshalled, to support claims. Affect, empathy, and principled or moral beliefs may also be deeply involved, since the ultimate goal is not to challenge the “truth” of something, but to challenge, whether it is good, appropriate, and deserving of praise. In these cases, what the organizational network provides is information and access to important audiences for that information, especially the media and decision-makers.⁹⁹

In most cases, for an emergent norm to reach a threshold and move toward the second stage, it must become institutionalized, in specific sets of international rules and organizations. Since the incipient days of the UN and the onset of the Cold War, emergent norms have increasingly become institutionalized, within international law, in the rules of multilateral organizations, and across mutual foreign policies. Such institutionalization, contributes strongly to the possibility for a norm cascade, both, by clarifying what exactly the norm is, and what constitutes violation (often a matter of some disagreement among actors), and by spelling out specific procedures, by which norm leaders coordinate disapproval and

⁹⁹Johanna Martinsson, ‘Global Norms: Creations, Diffusion, and Limits’, Communication for Governance and Accountability Program (CommGAP), *The International for Bank Reconstruction and Development/ The World Bank*, 2011, p.1

sanctions for norm breaking. Institutionalization of norms about biological and chemical weapons, for example, has been essential to coordinating the near universal sanctions on Iraq following the Gulf War and has enabled states to coordinate an invasive inspections regime aimed at securing compliance with those norms. Institutionalization is not a necessary condition for a norm cascade, however, and institutionalization may follow rather than precede, the initiation of a norm cascade.

‘NORMS’ AND THEIR ‘TIPPING-POINTS’

After norm entrepreneurs have persuaded a critical mass of states, to become norm leaders and adopt new norms, we can say that, the norm reaches a ‘threshold’ or ‘tipping-point’. Although convincing quantitative empirical support for the idea of a norm tipping-point and norm cascades are provided, yet, adducing a theoretical account, for why norm tipping occurs, or the criteria for specifying a priori, as to where, when, and how we would expect it, remains elusive. Twin tentative hypotheses, about what constitutes a “critical mass”, and when and where to expect norm tipping exist. First, although it is not possible to predict, as to exactly how many states must accept a norm to ‘tip’ the process, because states are not equal when it comes to normative weight, empirical studies suggest that, norm tipping rarely occurs before, one-third of the total states within the system, have adopted the norm. Upon that point, a norm cascade is presumed and consequently proclaimed to have occurred. It also matters, as to, which states adopt the norm. Some states are critical to a norm’s adoption, while others are less so. What constitutes a ‘critical state’ will vary from issue to issue, but one criterion is that critical states are those, without which the achievement of the substantive norm goal is compromised. States may also be ‘critical’ because, they are reposed, of a certain moral stature. Although cascades require support from some critical states, unanimity among them, is not essential. Treaties implicitly recognize this concept of critical mass, by specifying that, a particular number of countries must ratify, for the treaty to enter into force. Where treaties exist, the entry into force of the treaty may be a useful proxy, for the critical mass necessary, to say that a norm exists.

NORM CASCADE

This stage in succession to the prior phase of Norm Emergence constitutes a period during which, states assume to adopt, embrace or appear in support of norms, without having to have popular constituencies or designated norm-entrepreneurs, breathing down their necks. During this phase, a significant number of states are observed to be bringing themselves into

conformity with their understood normative beliefs, leading to a critical mass of states following suit, being incumbent, for the said norm to consummate itself, in reaching the threshold of cascade. It would be nothing short of subjective prejudice, to pinpoint a precise number of states embracing the norm as constituting a threshold, however, suffice to say that the calibre of states that accept the norm, is as epochal as the quantum of status that coalesce around it. Notwithstanding the building crescendo of states in support of a norm, for any given norm to consummate and remain ensconced in cascade mode, going forward, entails international pressure by the system's hegemon, wherein compliance is often seen to peak.¹⁰⁰

What drives the process of a norm cascade is a dynamic and skittish process of popularisation, of the said norm, which shall only come about through gregarious processes at communitarianism, wherein the wilfulness of norm-breakage, pivots and flips to norm-adherence. What can bring such mutations in behaviour to fruition are impulses of replication, a sense of gratification that comes from being the benefactor of laudation for certain adopted courses of action, and conversely becoming the objective of derision and scorn, and objectified through social and/or material proscriptions, when found in flagrant infraction of the normative expectation. All said, during the period of norm-cascade, sufficing magnitude of critical states are on the right side of the ledger in terms of affirming the said norm, leading to state behaviour being redefined and compliance described as a norm in itself.¹⁰¹In this regard, it may be veritably averred that the decade of the 1990s met with the phenomenon of a number of states adopting and institutionalising human rights legislation, both internally within their domestic environs, but also contributing the global drift in favour of human rights appreciation, seen in the UN's establishment of multiple International War Crimes Tribunals leading into the treaty based formalisation of the International Criminal Court (ICC), ostensibly to prosecute those culpable of human rights abuses. Besides, the intellectual trajectory within and outside policy making circles and diplomatic corridors, manifested through the development of the Human Development Index (HDI), the propagation of the term of Internally Displaced Persons (IDPs), as distinct from the perfunctory understanding of Refugees under the Convention of 1950, and the changing definitional understandings Sovereignty and State Responsibility, have all contributed to the movement in favour of the norm cascade of international human rights.

¹⁰⁰Sonia Cardenas, 'Norm Collision: Explaining the Effects of International Human Rights Pressure on State Behaviour', *International Studies Review*, vol. 6, no.2, 2004, p. 218.

¹⁰¹Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change', *International Organization*, vol. 52, 1998, p. 902.

Notwithstanding the foregoing, it would be foolhardy to construe sovereign states as being the sole singular agents of socialisation. At a time when the world is more interconnected and interdependent than ever before, hubs of norm-entrepreneurs can coordinate actions in disposing as change agents, by bringing the appropriate form of pressure to bear upon target states or allied actors. If applied in studied measure, such pressures from the extant can work favourably on states and other actors, who are motivated to act positively with a view to safeguarding their reputational credence, integrity and identity, the turpitude of which would be discerned based on the actions of compliance or non-compliance, exuded by such states.

A state's identity is as a member of a particular social category, and part of the definition of that category, is that all members scrupulously abide by certain norms. What happens at the tipping-point is that, enough states and enough critical states at that, endorse the new norm to redefine appropriate behaviour, for the identity called 'state' or some relevant subset of states, such as a the 'liberal' state. To the degree that states and state elites, fashion a political self or identity in relation to the international community, the concept of socialization suggests that the cumulative effect of many countries in a region adopting new norms, may be analogous to 'peer pressure' among countries. Three possible motivations for responding to such peer-pressure are identified, as legitimation, conformity, and esteem.

Scholars have long understood that, legitimation is important for states, and have recognized the role of international sources of legitimation, in shaping state behaviour. Claude, for example, described international organizations as "custodians of the seals of international approval and disapproval", and emphasized their crucial role in establishing and assuring adherence to international norms.¹⁰² Certainly there are costs that come with being labelled as a "rogue state" in international interactions, since, this entails loss of reputation, trust, and credibility, the presence of which have been amply documented, to contribute to Pareto-improving effects, from interstate interaction. Furthermore, states also care about international legitimation, because, it has become an essential contributor to perceptions of domestic legitimacy, held by a state's own citizens. Domestic legitimacy is the belief that, existing political institutions are better than other alternatives, and therefore deserve obedience. Increasingly, citizens make judgments about whether their government is better than available alternatives, by looking at those alternatives, in the international and regional

¹⁰²Inis Claude, Jr., 'The United Nations of the Cold War: Contributions to the Post-Cold War Situation', *Fordham International Law Journal (FILJ)*, vol. 18, 1994, p. 789.

arena, and by seeing what other people and countries say, about their country. Domestic legitimation is obviously important, because, it promotes compliance with government rules and laws; ruling by force alone, is impractical and untenable. Thus, international legitimation is important insofar as it reflects back, on a government's domestic basis of legitimation and consent, and thus ultimately, on its ability to stay in power. Conformity and esteem, similarly involve evaluative relationships, between states and their state peers. Conformity involves what Robert Axelrod refers to as "social proof", i.e., that states comply with norms to demonstrate that, they have adapted to the social environment, to which they belong.¹⁰³ Esteem is related to both conformity and legitimacy, but it goes deeper, since it suggests that, leaders of states sometimes follow norms, because, they want others to think well of them, and they want to think well of themselves too. Social norms are sustained, in part, by feelings of embarrassment, anxiety, guilt, and shame, which a person suffers, at the prospect of violating them. Identity is based on those aspects of the self, in which an individual has special pride or from which an individual gains self-esteem. Thus, the desire to gain or defend one's pride or esteem can explain norm following. The micro-foundations of both the conformity and esteem arguments for states are psychological and rest on extensive research on the importance of self-esteem and conformity for them. The power of conformity to group norms is so strong in some experimental situations that states will make statements that are objectively wrong in order to avoid deviating from group judgments. In situations where, the objective reality is ambiguous, states are even more likely to turn to social reality, to form and evaluate their beliefs. Theories of cognitive dissonance may also provide insights into the motivations for norm-conforming behaviour. Studies suggest that cognitive dissonance is aroused primarily when states notice that their behaviour leads to aversive consequences, which cannot be easily rectified. The unpleasant experience of dissonance leads actors to reduce it, by changing, either their attitudes or their behaviour.

State leaders conform to norms, in order to avoid the disapproval aroused by norm violation, and thus to enhance national esteem, and, as a result, their own self- esteem. Norm entrepreneurs frequently single-out and target individual state leaders, for criticism. Because much norm advocacy involves pointing to discrepancies between words and actions, and holding actors personally responsible for the adverse consequences of their actions, one way to think about norm entrepreneurs is that, they provide the information and publicity that provoke cognitive dissonance, among norm violators. In the context of human rights, some

¹⁰³Robert Axelrod, 'An Evolutionary Approach to Norms', *American Political Science Review*, vol. 80, no. 4, p. 1099.

state leaders care deeply about their international image as human rights Samaritans or violators, and make significant policy changes in order to sustain the former and redress the latter image.

NORM INTERNALISATION

By the final stage of the cycle, norms achieve a taken-for-granted quality (Internalisation), and are in the realm, where they are seldom questioned. At this stage, norms are at their strongest in constituting actors. At the extremity of a norm-cascade, norms may become so widely accepted that, they are internalized by actors that, makes conformance with the norm, almost automatic. For this reason, internalized norms can be both extremely powerful, because behaviour according to the norm is not questioned, and hard to discern, because, actors do not seriously consider or discuss, whether to conform. Instead of trying to explain variation in state behaviour, one is puzzled by the degree of similarity or 'isomorphism' among states and societies, and how those similarities have increased in recent years. Their explanations for these similarities, point to past norm cascades, leading to states taking up new responsibilities or endowing individuals with new rights, as a matter of course. Professions often serve as powerful and pervasive agents working to internalize norms among their members. Professional training does more than simply transfer technical knowledge; it actively socializes people to value certain things above others. As state bureaucracies and international organizations have become more and more professionalized over the twentieth century, we should expect to see policy increasingly reflecting the normative biases of the professions, which staff decision-making agencies.

A number of empirical studies have already documented a role for highly internalized norms, held by professionals, determining policy. Another powerful and related mechanism, contributing to the consolidation and universalization of norms after a norm cascade, may be iterated behaviour and habit. Political scientists have understood the power of these mechanisms for years but have not connected them theoretically, to norms and social construction debates. The core of the neo-functionalist argument after all, is that frequent interactions among people involving joint work on technical tasks, which would ultimately create predictability, stability, and habits of trust. As trust becomes habitual, it would become internalized and internalized trust, would in turn, change affect among the participants. Changed affect means changed identity and changed norms as empathy and identification with others shifted. Diplomatic tools such as confidence-building measures and Track-II diplomacy follows a similar logic. Generalized, this argument suggests that routes to

normative change may be similarly indirect and evolutionary: procedural changes that create new political processes can lead to gradual and inadvertent normative, ideational, and political convergence.

Not only do norms acquire widespread acceptance, such that compliance is no longer controversial, through processes of iteration and identifiable patterns of such repetitiveness, suitably complemented by the basis within legislated law, they become the in-thing, i.e. the Norm.¹⁰⁴ However, this by no means signifies that the process is or can never be impugned, since the post-cold war era has been replete with problematized theorizing coalesced around the concept of State Sovereignty, and the attributes of individualism vis-à-vis universalism of values. Panoply of human rights crisis-situations through the decade of the 1990s, spurred the dialectic discourse around obligation and responsibility of states and the comity of states, with regard to the latitude for interventionism. The nudging instructiveness of this querying is suggestive of the fact that society has arrived at a point in its evolution where, sufficiently internalised norms such as state sovereignty can be circumscribed or even assailed at the altar of protecting human rights, but, in extenuating concourse of circumstances. Its passé for norms to collide in contention, as the incandescence of a particular norm is contingent upon convergence with peer norms.

The norm life cycle theory structurally delineates the evolutionary trajectory of norm emergence by decoding the support-system to norms, impinging on state disposition through the amiability and gregariousness of so-called 'norm entrepreneurs.' Though it's broadly acknowledged that normativity theorizing insufficiently embodies and reflects the contribution of domestic pressure points in the cascading and internalisation phases of normative build, yet, it can't be greater underscored that there is no escaping the outsized role of international organizations and their agency within the norm internalisation process. This said, the internal audience constituencies which exhort states to embrace and adopt certain norms, invariably ensure that the political leadership across these states have their back, when exhorting peer states or even bringing other states under duress, to follow through in emulation.

¹⁰⁴Ann Florini, 'The Evolution of International Norms', *International Studies Quarterly*, vol. 40, no. 3, 1996, p. 374.

CONNECTING DOMESTIC AND INTERNATIONAL NORMS

The fact remains that, domestic norms are deeply entwined, with the workings of international norms. Many international norms began as domestic norms, and in due course of time, become international, through the pioneering efforts of entrepreneurs of various kinds. In addition, international norms must always work their way, influencing through the filter of domestic structures and domestic norms, which can produce important variations in compliance and interpretation of these norms. Even in situations where it might appear at first glance that, international norms simply trump domestic norms, what we often see, is a process by which domestic ‘norm entrepreneurs’, advocating a minority position, use international norms to strengthen their position in domestic debates. In other words, there is a two-level norm game occurring, in which the domestic and the international norm tables are increasingly linked. However, that all these domestic influences are strongest at the early stage of a norm’s life cycle and domestic influences, lessen significantly, once a norm has become institutionalized in the international system. International relations scholars have generally assumed that, the existence of a coercive state able to enforce laws, made domestic order, very different from the international order. It’s argued that, even within a domestic setting, making successful law and policy, entails an understanding of the pervasive influence, of social norms of behaviour, a particularly compelling insight for International Relations (herein referred to as ‘IR’) scholars, since the international system is characterized by law and norms, operating without direct punitive capacity. The processes through which these legal scholars claim that norms work domestically, involving norm entrepreneurs, imitation, norm cascades, and norm bandwagons, are entirely consistent with the terrain of global politics and the international system.

As to what kinds of norms and rules could lead to a decrease in conflict in the international system, the dichotomy of ‘stability versus change’ macro-level theorizing has provided good explanations, of the way norms produce social order and stability. Norms channel and regularize behaviour; they often also limit the range of choice and constrain actions. From a constructivist perspective, international structure is determined by the international distribution of ideas, and its shared ideas, expectations, and beliefs about appropriate behaviour that lend the world structure, its order and stability. However, explicating the phenomenon of dynamism and change is much more difficult, since, in an ideational international structure, idea-shifts and norm-shifts are the main vehicles, for system

transformation. Norm shifts are to the ideational theorist, what changes in the balance of power are, to the realist.

NORM LEGITIMATION AND EMPOWERMENT

Norm empowerment is the process through which, norms situate themselves within the domestic realm. Twin processes predominate, in terms of emboldening norms nationally, viz., wherein non-state entities and associates coalesce in strong support of a particular norm and exert pressure upon pertinent decision-makers, to embrace the articulated normativity; and where decision-makers adopt norms, as they stand enjoined, internationally. In the first instance, the norm far from being subsumed, militates as a constraint upon demeanour through pressure from the extant, whilst in the later dimension, they stand embraced through a conscious mutation in ‘inter-subjective understanding’, brought on by a veritable appreciation of the latent epochality of the said norm.¹⁰⁵

As a nation’s elites and decision-makers glean novel values and interests, their cognitive frame commences to manifest, an ostensible ‘logic of appropriateness’, in respect of globally adopted norms. As elites embrace new values and interests, their policies begin to reflect a ‘logic of appropriateness’, which is emblematic of global norms and the example of other states. In each of the earlier processes, wringing acceptance of norms by decision-makers is a necessary but not sufficient condition, for empowerment to transpire. When national and international pressure groups confluence in converging upon decision-makers, they impel policy reform and change. One cannot underline the significance of transnational actors, in acting as the conduit, between internationally espoused norms and those that domestic policymakers, come around to embrace and accept, through actions-in-concert. Such transnational entities go to work, in an amalgamating blend of procreating issues and agenda-setting, exerting sway on discursive stances of states and international organizations alike, exerting an influence on processes of institutions, impinging on mutating target-actors, and imposing metamorphosis upon state disposition, respectively.

Upon internalisation of norms, they need to be further buttressed into scrupulous acceptance, through abiding advocacy in support of their uniform and universalised application; through demanding for holding policymakers who are deviant in the application of norms, culpable for apparent delinquency; and to intimately keep tabs on the norm’s

¹⁰⁵Jeffrey Checkel, ‘International Norms and Domestic Politics: Bridging the Rationalist-Constructivist Divide’, *European Journal of International Relations*, vol. 3, no. 4, 1997, p. 477.

execution. Of course, it goes without saying that transnational advocacy can only succeed in circumstances, where the sovereign decision-makers are receptive to the normative articulation, both conceptual and in respect of the narrative, since stubborn or phlegmatic policymakers would routinely undercut the cause of institutionalising such norms. Hence the suggestion that, norms meet with facile through-put in democratic systems, due to the inherent checks and balances system in operation.

PERMISSIVE / PRESCRIPTIVE NORMS OF HUMANITARIAN INTERVENTION

An important axis pertaining to norms, one which is often obscured within the corpus of literature on the subject, and is the source of much confusion, concerns the nature of a norm's injunction. A fundamental distinct is in order between norms, which differentiates those which circumscribe or restrain a particular strand of demeanour, against those which are permissive of a specific hue of disposition, with those that enjoin or entail a particular tenor of conduct, carrying the nomenclature of prohibitive, permissive and prescriptive norm, respectively. Distinguishing the aforesaid types of norms, which may innocuous on cursory glance and superficial consideration, often stands comprehended for the vital distinction that they fork-up, since it is on the basis of a clear conceptual differentiation of norms along the trinity axis, that helps classify and categorize behaviour, as acceptable or un-condonable.

For instance, the generic and inveterately held norm of non-intervention within the internal affairs of a sovereign-state that was enshrined within the UN Charter and largely stood its ground during the breadth of the Cold War is an example of a prohibitive norm in place. In contrast, the contentious debate, that pervades the ensuing period, about the emergence of a norm of intervention in support of humanitarianism and in response to grave human rights violations that is legitimate, is an instance of a permissive norm. Finally, the assertion that a norm that requires states within the international system to consider suitable intervention into the internal affairs of a sovereign-state, with a view to ameliorating the human rights violations transpiring within that state is an example of a prescriptive norm. The imperative for distinguishing between permissive and prescriptive norms stands highlighted by the dint of the propositions of humanitarian intervention being perceived as a legitimate response to human rights violations on the one hand, and states feeling obliged or have a redefined national interest, in favour of responding to these violations, on the other hand, being chalk and cheese. To fully appreciate the difference, it is perhaps helpful to return to our functional typology of regulative and constitutive norms.

Both permissive and prescriptive norms of humanitarian intervention can be understood, in regulative as well as constitutive sense. Where a certain action is simply allowed by a permissive norm, a regulative understanding sees the norm as permitting the action, and a constitutive understanding sees the norm, as allowing a state to consider the action, as one of a range of possible policy choices, that may or may not coincide with its national interest. Where a certain action is prescribed by a norm, on the other hand, a regulative understanding sees the norm as requiring action, and a constitutive understanding sees the norm, as shaping and redefining the interests of a state, so that complicit action is the preferred behaviour. To put it pithily, norms which are seen to presuppose enjoinders simply preclude certain actions, without seeking to reconstitute such interests, so as to legitimize a particular course of action. However, it's in the realm of possibility for prescriptive norms to recast state interests such that norm compliance is shown to be in the target-state's overriding interest. Emphasizing the permissive nature of humanitarian norms, one may add that it is observed that while emergent norms appeared to allow intervention, in response to humanitarian disasters and human rights abuse, these norms did not require intervention. It may be asserted that, mutating norms change state interests and create new interests, such that potential interveners have a perceived interest in the intervention. While emphasis is laid on that humanitarian intervention norms were 'permissive norms only, the welter of empiricism on the subject, does imply a prescription to intervene, too.

It has often been noticed that norms are fraught with the problem of not being able to identify precise disposition, in that they simply laid down the generic standard of what requisite demeanour ought to be, hence, making it difficult to moniker a norm, as either permissive or prescriptive, without accentuating the classificatory confusion. Through labelling a norm as 'prescriptive' it must not send out the erroneous notion that the said prescription shall dictate how states behave, rather that, the norm merely influences behavioural predilections. A permissive norm of humanitarian intervention may allow and legitimate intervention, in response to grave violations of human rights, although, it is quite different to speak of a prescriptive norm that serves to reshape state interests, towards a preference for such intervention. For instance, when the UN Secretary General Kofi Annan, took to the bully pulpit of the UN General Assembly in 1999, and asserted the developing international norm to protect civilians from wholesale slaughter, he was declaring a new commitment to humanitarian action, yet, also speaking to the commensurate redefinition of state interests, such that, the collective interests conflates with individualised national

interest.¹⁰⁶ While the focus invariably remains on the circumstances under which interventions for humanitarian purposes are justified, as in the permissive norm, nevertheless, as voiced by SG Annan, the procreation of cogent political resolve and will to undertaken intervention in the apparent absence of material self-interest, i.e. the prescriptive proposition of the norm, is equally epochal.

A fuller accounting and understanding of the causal relationship between the permissive humanitarian norm and attendant humanitarian action is important to make sense of the selectivity that often reeks, when international interventions of a military nature are mounted. States do not intervene just because they are allowed to do so. Why they do so, requires wrestling with the issues of construction and deconstruction of interests and preferences, as perceived and framed by states, and the sense of obligation, that they are sentient about. Modern day humanitarian intervention, does not lend itself to being explained in terms of realist impulses, contextualised to material interests itself; the explication suffices, when alluded to in a mutating normative context, within which it transpires.

Another key element, which distinguishes between norms, regards the content of the norm. It is obvious that, we must consider what the prescriptive norm of humanitarian intervention, actually prescribes. There is a widening range of internationally agreed norms, regarding the rights violations, that, humanitarian intervention seeks to prevent. The most important of these, is the Convention on the Prevention and Punishment of the Crime of Genocide (adopted by Resolution 260 (III) A of the UN General Assembly, 1948). Article I of the Genocide Convention provides: “The Contracting Parties confirm that Genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish”.¹⁰⁷ Article II defines Genocide, as any of a list of five acts ‘committed, with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.’ The broad acceptance of the convention in international society is signalled by the fact that, one hundred fifty two states have ratified the document. Nevertheless, it should be acknowledged that, what actually constitutes genocide remains a contested concept in literature, but importantly, in practice of statecraft as well.¹⁰⁸ The extent to which a finding of genocide places a legal obligation upon signatory states to intervene also remains a matter of

¹⁰⁶Kofi Annan, ‘Speech of the UN Secretary-General to the General Assembly,’ 20 September, 1999. <http://www.unis.unvienna.org/unis/pressrels/1999/sg2381.html>. Accessed on 14 January 2020.

¹⁰⁷Jeffrey Morton and Neil Singh, ‘The International Legal Regime on Genocide,’ *Journal of Genocide Research*, vol. 5, no.1, 2003, pp. 49-50.

¹⁰⁸Scott Straus, ‘Contested Meanings and Conflicting Imperatives: A Conceptual Analysis of Genocide,’ *Journal of Genocide Research*, vol. 3, no. 3, p. 2001, p. 355.

some debate. While the minutiae of genocide are debated, it can be argued that opposition to the act of genocide is not only codified in conventions, it is a universal reality.

While the world remains cleaved, by irredentist ethnic, nationalist, religious and sectarian ideologies, even the most euphorically effusive of enthusiasts, for prescriptive relativism, usually cannot bring themselves to advocating toleration for sincerely felt genocidal impulse'; this despite, the dint of wide consensus in agreement, on the morality of humanitarian action, amongst all significant cultural and religious perspectives of persuasions. While divergence can certainly be found, regarding specific rights found in the Universal Declaration of Human Rights (1948), there is agreement on the right of all individuals, to a life free from exterminatory purge and deliberate harm. There can be persuasive arguments that, these human rights ideals and aspirations, are by no means a Western invention or Christian imperial impositions, but principles which can be found in Islam, Judaism, traditional Asian values, and traditional African societies, too. Claims to the contrary are most often made by states, with a desire for protection from outside scrutiny and condemnation. For example, all nations formally accept that torture, rape, massacre and forcible expulsion are violations of international humanitarian law. It should be noted that wide agreement on the morality of humanitarian action in response to rights violations, does not prove that such action is moral.¹⁰⁹ The point to be made is simply that, such action is accepted as being an appropriate moral response. But what are the implications of this acceptance? This thesis dissertation examines the extent to which forcible intervention is the expected and appropriate behaviour of states to grave violations of human rights. This requires examination of the strength of the norm prescribing intervention.

The final key feature, that distinguishes norms from each other, is the strength of their causal impact on state behaviour. In order to assess this strength, three foundational and methodological issues, must be dealt with. Firstly, there must be clarity about the reasons why, a norm may impact, on the behaviour of a state. Secondly, the adoption of a methodology for determining the functional nature and the strength of a norm, through examination of its impact on state behaviour, is imperative. Finally, acknowledging that norms and self-interests are not always antithetical explanations of state behaviour, the need to control for self-interest, while examining the impacts of a norm, ought to be addressed.

¹⁰⁹Oliver Ramsbotham, 'Islam, Christianity, and Forcible Intervention,' *Ethics and International Affairs*, vol.12, 1998, p. 85-86.

THE PRESCRIPTION IN HUMANITARIAN INTERVENTION NORM

Much of the literature, which focuses on the prescriptive nature of the humanitarian intervention norm, emphasizes the moral attributes embodied within the enjoinder, a standard or threshold of obligation that the welter of states within the global fraternity, are expected to adhere to. However, it is reckoned that the precise character of the duty prescribed underpinning humanitarian intervention, attenuates and shrivels its cogency, since prescriptions of obligatory duties are inevitably imperfect and inherently subjective in regard. As an upshot, intervention in terms of the moral duty imposed upon it under prescription, is viewed as supererogatory, in so far as it is considered desirable to be accomplished, but not sacrilegious, if not undertaken. The generic issue with humanitarian intervention is the standard of duty that it lays down applies itself to no specific agent; hence, it's not blasphemous if not undertaken despite its situational asperity, and when rationalized, albeit when it does not vitiate the regional or global order. Even as the case is eminently and plausibly made for intervention, states capable of doing so simply prefer to be mute bystanders, and render the moral duty, a pass. And if this isn't enough, then, what accentuates matters is that being an imperfect duty, its assailment may be found, not in the derogation of action, but in the excesses of inaction or omission, such that, it's the failure to act rather than the miscarriage of inaction, that determines infraction here.

Furthermore, what the dialectic of positive and negative rights introduces into the equation is the infirmities of tending to members of the international community, with the wherewithal to act, but who choose not to. While sanctioning target-states in response to their unconscionable acts within their territorial frontiers is perfectly conceivable, it's difficult to envision action being initiated against a state or group of states for not performing their moral duty, when confronted with a specific situational spectre. Norms are far easier to constrain or restrict actions or to deny some entity from doing something, rather than to bring them under duress to precisely do something positive. While an obligation to harm nobody is plausible, there can be no obligation to help everybody, since "ought-to implies can, and not necessarily should".

PRESCRIPTIVE NORMS AND MATERIAL SELF-INTEREST

Norms find their locus in the intermediate space between constructivists' talk-up and rationalists' deprecation and disparagement of them, as states are known to be torn between adhering to obligations brought on by collectivised expectations in the global realm and the

persuasions of national self-interest. An ideal framework for understanding the dichotomy, involves moderating the willingness of rationalists to emphasize the downsides to norms, and modulating the heady emphasis placed on norms, courtesy the constructivists, best embodied in the interplay of normative context and material interests. It does not have to be that normative frames and self-interests calculus are mutually juxtaposed in interpreting and explaining state behaviour. In positioning them as ranged against each other in competitive relationship inter se, the potential for them to be enmeshed, in hybridized considerations of humanitarian intervention, stands to be obfuscated. Norms and self-interest conflict and contend, yet they also converge and complement, such that normative expectations and self-interest calculus may impose distinct state preferences, even as states could choose to one over the other or opt for a blended approach. This said, some norms can bring self-interest considerations down, while others fail to supersede them, leading to the characterization of ‘strong’ and ‘weak’ norms. Where perceptions of states’ self-interests run-up against the shared beliefs and expectations of appropriate behaviour by the collective of states, it constitutes a proverbial grey area, leading to the aphorism that “norms are what states make of them”.¹¹⁰ Here, states are able to manipulate the empirical facts of a case and its salient normative issues, in order to present the narrative of violation of a norm, as socially acceptable.

On other occasions the dictates of self-interest and norms coincide, and the state can be expected to pursue the course of action, which both self-interest and norms suggest. In these instances, the causal explanatory power of the norm, in question, may not be readily discernable. Correlation is not causation. When examining the strength of a norm, we must be careful to only credit the norm with behaviours to which it helped cause. In other words, we should not credit state actions to the impact of a norm if they can be better explained by other factors. In addition, where a norm has impacted on states’ policies, we must still consider the impact of conjunctive factors as this helps us in our assessment of when and where particular norms matter.

Regardless of whether a norm and a state’s self-interest are conflicting or complementary, therefore, one must control for self-interest, when determining the strength of a norm, which in itself poses a daunting methodological challenge. Rational-actor theorists end up sanguine, assuming that, actors will rationally pursue their own self-interest.

¹¹⁰Vaughn Shannon, ‘Norms Are What States Make of Them: The Political Psychology of Norm Violation,’ *International Studies Quarterly*, vol. 44, 2000, p. 294.

Constructivists, for their part, equally assume the causal link in norms, rather than basing their observation on causation, from empirical ascertainment. It is quite commonplace for national decision-makers within sovereign states confronted with the challenge of shaping the discourse, pertaining to the prospect of humanitarian intervention on the horizon, to nudge public opinion a certain way by framing the issue(s) accordingly, buttressed further by potential selective culling or cherry-picking of facts. This creates the need for ascertaining the strength of the prescriptive norm, in the context of self-interest, which helps to understand the capacity of the norm to gainsay, rationalize or condone derogation. The norm of humanitarian intervention, unless robust and resilient can be susceptible to the vagaries and vicissitudes of national leaderships, who could conveniently argue for humanitarian intervention on grounds of solidarity that unites behind those dealt a raw deal in supreme humanitarian emergencies, and equally could counsel for inaction, taking recourse to pluralist conceptions and concerns of preserving the sanctity of the international order.

Another vista for examining and definitively opining on the bolstered nature of the norm, is to observe for its enshrining within the framework of international organizations, its ingraining across discourse, and the scrupulousness or otherwise of its implementation. This is particularly glaring in the case of the Genocide Convention and the spectrum of human rights declarations, covenants and other international legal instruments, which despite their understood legal effect, remained mere provisioning for protection of human rights, rather than actually serve to effectively protect innocent civilians in the crosshairs of conflict. Discourse may be observed in the trove of communication between national decision-makers and senior advisers and key figures within government and those on the outside with substantive influence over course of action. Discourse also pertains to the disconnect in pronouncements which can manifest when states exhibit the proclivity and propensity to engage in platitudinous polemics, not backed up by the crucible of tangible veritable action.

It merits examination of the differentiated and variegated responses to human rights abuses across geographical coordinates including the alleged ‘anarchic enforcement’ of human rights in international society.¹¹¹As the sole superpower within an apparent unipolar world order emanating from the end of the Cold War, the manner in which the United States with its preponderance for action and inaction alike and its ability to mobilize and forestall consensus in equal measure, has sought to appropriate itself to the slew of humanitarian crises

¹¹¹Ryan Goodman and Derek Jinks, ‘How to Influence States: Socialization and International Human Rights Law’, *Duke Law Journal*, vol. 54, no. 3, 2004, p. 662.

during the 1990s in particular, proffers clairvoyant takeaways, for a qualitative appraisal of the nature and strength of the prescriptive norm of humanitarian intervention.

NORMATIVE INTERPLAY OF PRESCRIPTION VIS-À-VIS SELF-INTEREST

The US-UN politico-diplomatic and military intervention in war-torn Somalia during 1991 through early 1995, together with the precursor involvement in Post-Gulf War Northern and Southern Iraq in 1991, has widely been alluded to as an ideational false start, for the breakout doctrine and emergent norm of humanitarian intervention; arguably in an understandable measure. While Rationalist theorizing embodying the tenets of realist thinking would seek to explicate external international involvement ascribed to the conjured and contrived strategic importance in terms of the security threat or the economic attraction of these hotspots, yet, they are unable to rationalize the nature and character of the international normative context, the normative construct conditioning and shaping the role and disposition of sovereign actors and their collectives as organizations. The fact remains that, Somalia, situated in the conflict ridden vortex Horn of Africa subset on the African continent, was at the time, neither a geostrategic nor a commercially-economic entity of advantage to region and/or global powers, most notably the West. The Cold War had ended and ideological polarity no longer constituted or drove spheres of influence. Though situated in close proximity to the mouth of the Red Sea, one of the twin strategic maritime choke-points, the spectre of anti-access area denial of strategic waterways had not emerged as a viable threat on the horizon.¹¹² The country known for its physiological asperities of aggravating famines and induced droughts, was neither awash with all, nor situated itself on a critical artery of thoroughfare, and even the scourge of terror that has come to envelope it in subsequent times and grip the larger section of East Africa, was not evident at the time. This said, even the more cynical notions, that impute the motive of the US discerning the ability to pull-off the Somalia intervention ‘on-the-cheap’ in comparison to the clamour in the former Yugoslavia, sounds disingenuous, as sovereign-states which are inherently self-interested, do not embroil their troops on foreign lands, borne of crass whims or caprice, much less entangle themselves in theatres that behold no security or economic interests, simply because, they portend ‘manageable’ harm.¹¹³ All of this and more serves to suggest the facetiousness of any

¹¹²James L. Woods, ‘U.S. Government Decision-making Processes during Humanitarian Operations in Somalia,’ in Walter Clarke and Jeffrey Herbst (eds.), *Learning from Somalia: The Lessons of Armed Humanitarian Intervention* (Boulder: Westview Press, 1997), p. 151.

¹¹³John L. Hirsch and Robert B. Oakley, *Somalia and Operation Restore Hope: Reflections on Peace-making and Peacekeeping* (Washington DC: United States Institute of Peace Press, 1995), p. 42

argument made to justify intervention in Somalia by the international community, more specifically the US, on realist grounds.

President George H. W. Bush's decision to principally intervene to alleviate the maladroit governance induced famine and attendant starvation in Somalia, is an example a decision-maker, acting as a 'norm entrepreneur'. Defined as political actors, who actively and consciously foment social change, norm entrepreneurs served to enhance the process of socialisation around norms by framing issues in specific ways of communication and communicative behaviour to engender strong notions about appropriate or desirable behaviour where none exists and/or develop suitable alternative models of 'appropriateness' and 'interests', where the perceptual lay of the land is jaded.¹¹⁴ President Bush's role at the apogee of the inter-agency policy formulation, articulation, and implementation processes, within the US government, is testament to the contributions of veritable norm-entrepreneurs. Notwithstanding the pressures that came to bear from accosting norm-entrepreneurial entities such as Members of the US Congress, the Media, it was the President's norm entrepreneurship that was consequential and served to move the needle on fostering the humanitarian intervention, despite the absence of material national interests being at stake.

The role of President Bush's norm entrepreneurship gains prominence when viewed in the context of his initial reluctance and lackadaisical approach, in the early months after the fall of the dictator SiadBarre and the descent of the country of innumerable clans and warring tribes into chaotic abyss, in January 1991.¹¹⁵ Amidst UN pressure for the major powers (euphemistically the P5) to step up to the plate and help to stabilize the country, all that President Bush was willing to commit to, was American assistance in facilitating the dispense of humanitarian relief supplies providing succour and sustenance to the emaciated populace of the nondescript nation; nothing beyond. Yet, as humanitarian relief agencies and beneficent NGOs got cracking on the ground, news reports of mass starvation deaths and human purge at the altar of fratricidal warfare, reinforced by grim assessments by the US Ambassador in neighbouring Kenya, did shake-up President Bush's moral compass and roused him into action; his personal preference for substantive intervention, predominantly borne of his moral

¹¹⁴Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change', *International Organization*, vol. 52, no. 4, 1998, p. 896.

¹¹⁵Woods recalls that State Department officials were called six times, to give formal testimony on Somalia before the House and Senate Committees, during the period January to June, 1992. However, this did not translate into either Media interest or Congressional pressure. *Ibid.*,155.

outrage and empathetic concern, for the innocents and their predicament.¹¹⁶ The adoption of an interventionist preference, in pursuance of ameliorating human suffering, embodies the implementation and empowerment, of a prescriptive norm of intervention.

It's well understood, that norms do not descend into laps, as manna from heaven. Instead, they are constructed and constituted by the identity and interests of the specific actors who embrace the crafting and engendering of such norms, becoming their catalysing agents for socialising change. While one may agonize over the tendency for Western powers to pursue their avowed liberal interventionist beliefs through an agenda of organized hypocrisy, double-standards and discrepant disconnect, yet, it cannot be gainsaid that whenever a higher ordering of norms get rooted and subsequently entrenched, they do so largely at the behest of the Western powers positioning themselves as the flag-bearers to a liberal internationalised global order, with the US at the apex of the pecking order of such a community of sovereigns. Hence, in the absence of any direct or collateral strategic or even rudimentary national interest in reckoning, it was President Bush's imbibed value system and consequently devolved interests that impelled him to conclude that in Wilsonian principles and traditions of what the US has come to represent, and given the wherewithal that it was buffeted with, it was becoming even beholden of the US, to respond to the grisly images of abject starvation, occurring, in albeit a distant land, thereby suggestive of the fashioning of the 'appropriateness' or 'ought-to-do' dimension of normative emergence. It's a different matter that the normative construction of the interventionist impulse could not sustain itself through the roll-over to a new Presidency, and tectonic change of circumstances on the ground, ensured that the interventionist mission, whose mandate had suffered a mission-creep too, proved prohibitively difficult to continue and ultimately unravelled in a debacle, by 1995.

A peek into the tone, tenor and content configuration of the policy debates that transpired, both within the inter-agency process in Washington, and around the Security Council horseshoe, signified an impinging influence and sway of the element of 'strategic framing' of human rights and humanitarian norms. In contrast to unvarnished empathy dictating the play of discussions and deliberations through the first year of the unfolding humanitarian crisis in war-wracked Somalia, the steady stream of visuals that spoke to unceasing civilian perdition, and the empirical and anecdotal experience of humanitarian relief agencies activities being hampered by unscrupulous and deviant militias, hideously hell-

¹¹⁶It was this same Ambassador, Smith Hempstone, who had warned that, Somalia could become a 'tar-baby' for the United States: 'If you liked Beirut, you'll love Mogadishu.' See Don Oberdorfer, 'The Path to Intervention; A Massive Tragedy "We Could Do Something About,"' *Washington Post*, December 6, 1992.

bent on the machination of deploying food and essential supplies as an instrument of war, in a country that was everything but a formally designated ‘failed state’, led key decision-makers within the politico-diplomatic community to invoke ‘security emergency’ as a co-equal idiom in their strategic framing of the mission, which until then, was posited as an out-and-out relief mission. Such a framing impacted the normative interplay of construction across the axis of appropriateness, consequences, and argumentation, and facilitated support for a robust course of action.¹¹⁷ It was evident to all and sundry, that if the humanitarian relief mission had to achieve its stated and envisioned objectives, then, the permissively virulent environment that Somalia had progressively degenerated into, had to be suitably addressed, leading to the emboldening of the mission, by December of 1992. Perhaps most importantly, the Somalia case demonstrates that, while human rights and humanitarian norms were consistently incorporated into the strategic framing of the crisis, the challenger frame that reshaped policy-maker preferences, to support the use of force in Somalia, portrayed it as a security emergency. This frame reflected these norms indirectly. For example, in its debate on Security Council Resolution 794, endorsing the multilateral (US-led) intervention, the United Kingdom stressed that, the humanitarian crisis was not being driven by too little emergency relief, but rather by too much insecurity. Council members also concurred that, without increased security, the mass atrocities and humanitarian suffering would only worsen.

While Realism emphasises the almost singular role of national interest, perceived from within the narrow promenade prism of security and economic stakes, as chaperoning and legitimizing sovereign state behaviour pertaining to the dynamics and mechanics surrounding the use of force, the constructivist streak allows for a confluence of material interests and intangible considerations to shape behavioural approaches and patterns. Since the summer of 1992, the broader global political environment, though not entirely comfortable, was nevertheless sufficiently conducive, to the idea of humanitarian interventions, in the aftermath of the successful prosecution of Operation Provide Comfort, within Northern and Southern Iraq, the previous year, an exercise that displayed hands-on adaptability, so as to accommodate the unprecedented imposition of ‘No Fly Zones’ (NFZs), in whittling down and defenestrating a sovereign functioning state’s sacrosanct rights, to operating its air-space. Right through 1992, the US and the UN were under serious pressure from myriad quarters, to

¹¹⁷Melissa Labonte, ‘Humanitarian Intervention in Somalia’, in Melissa Labonte (ed.), *Human Rights and Humanitarian Norms, Strategic Framing and Intervention: Lessons for the Responsibility to Protect*, (New York, USA: Routledge, 2013), p.65.

reset the intervention mission, in pursuance of making it substantive and efficacious on ground, and this provided the latitude to endorse the use of force in support of humanitarian aid supplies provided the key motivation to endorse the use of force, in order to protect UN and humanitarian staff, as well as humanitarian aid supplies, but not specifically to protect Somali civilians. The Somalia intervention can be characterized as action taken to address the humanitarian effects of a mass atrocity crisis, rather than deal decisively with its causes or civilian protection.

The causation effect of norms, in terms of their development within liberal democracies such as the US, also merits scrutiny and due mention. The use of force as a measure of foreign policy within liberal democracies carries a high threshold, given the momentousness and fraught nature of its exercise. Political echelons are accountable to their electorates and are expected to undertake decisions concerning the use of force, in an environ of due diligence, subjecting such decision to adequate deliberation, both within and outside government, and to ultimately premise such actions, on conformity with appropriate constitutional procedures (prior Congressional approval in the US) and predicated on informed public consent, achieved through transparent information-sharing and dissemination.¹¹⁸ This is in sharp contrast to those states, where power is centralised in the echelon and operates in a unitary manner, as is the case within authoritarian ‘state-above-society’ structures of polity and governance.¹¹⁹ Hence, it’s only plausible, for logics of appropriateness in defining and shaping norms within liberal societies, to draw on regulative and rational means-ends calculations, rather than be constitutively gleaned.

The constitutive aspects of humanitarian intervention norm in the US context has been read into the timing of President Bush getting proactive on his Somalia policy, mandating intervention and articulating it’s imperative with conviction. It ought to be borne in mind that it was President Bush himself, who unveiled his vision of a ‘New World Order’, weaving the narrative of deepening convergence over fundamental values supplanting the norm of ideologically ordained dogma in foreign policy, through his twin seminal Addresses, to the US Congress and the UN General Assembly, both in 1990.¹²⁰ Why then did President Bush have to wait-out, till his fate at the husting in November 1992 had been sealed, to make a fervent push for meaningful intervention in Somalia, in December 1992? And did this

¹¹⁸Colin Powell, ‘US Forces: Challenges Ahead,’ *Foreign Affairs*, vol. 71, no. 5, 1992-93, pp. 34-35.

¹¹⁹Ibid, 44, p. 475.

¹²⁰George H.W. Bush, ‘Bush Out of These Troubled Times.....A New World Order’, *Washington Post*, 13 September 1990. <https://www.washingtonpost.com/archive/politics/1990/09/12/bush-out-of-these-troubled-times-a-new-world-order/b93b5cf1-e389-4e6a-84b0-85f71bf4c946/>. (Accessed on 12 January 2020)

apparent holding out for precise political timing, dilute his made-to-believe moral conviction? While the dint of the incumbent being unencumbered from responsibility even as he held on to the trappings of power are understandable, was he simply acting in a bid to enhance and preserve his legacy, whilst tying the President-designate to a policy commitment and initiative, that wasn't of the incoming President's choosing or doing? This indicates that notwithstanding any level of acceptance for a norm of humanitarian intervention within international society, such a norm cannot be constituted and/or regulated by singular reference to moral evocations alone, but has to be forged in the context of pragmatic politics.

It behoves exploring three interrelated phenomena, which the story of the Somali intervention, reveals. The first revelation is that, ideas matter and can explain state behaviour. The available evidence suggests that, the decision to intervene was motivated primarily, by ideational rather than material factors. Secondly, in the absence of complementary material interests, a commitment to ideational concerns can prove to be unsustainable, when human and economic costs begin to rise, as occurred in 1993. Thirdly, the international and domestic norm prescribing intervention, functions in direct opposition to the domestic norm of force protection, and understanding the interplay of these two norms, is crucial, if one is to comprehend the possibilities for humanitarian intervention.

Perhaps the apparent constitutive impacts of the norm of humanitarian intervention, on President Bush's decision to intervene in Somalia, can be attributed to the fact that, he was an outgoing President, less burdened with anxiety for the long-term political consequences of his decisions and more able to respond to what he perceived as the moral requirements of an American president.¹²¹ Perhaps, this also helps explain why Bush's compliance with the norm of intervention represents an ideational false start for US foreign policy. President Clinton who assumed office during the Somali intervention was not free from the typical burdens of an American President as Bush may have been. The first Democrat in the White House for twelve years, Clinton was in no position to sacrifice his mandate for domestic change by ignoring the political costs of compliance with the norm prescribing intervention where no strategic or economic interests were at stake. In addition, the initial public support for intervention did not survive the unforeseen deepening of American involvement and President Clinton was unwilling to accept the subsequent political costs of a meaningful and multilateral commitment to nation building. Moreover, the reluctance of President Bush to

¹²¹William Durch, 'Introduction to Anarchy: Humanitarian Intervention and "State Building" in Somalia,' in William Durch (ed.), *UN Peacekeeping, American Policy, and the Uncivil Wars of the 1990s*, (New York: St Martin's Press, 1996), p. 319.

engage with the Bosnian War perhaps belies the depth of the ideational commitment to humanitarian norms in the first place.

The immediate impacts of the Somalia debacle were felt only a couple of months later when Rwanda descended into genocidal anarchy. Unwilling to risk the lives of their own troops and unable to articulate a material interest for acting otherwise, the United States and the rest of the international community stood by as 800,000 civilians were slaughtered. Five years later, the fortunate convergence of humanitarian concern with the strategic self-interest of the United States, produced an intervention in Kosovo that complied with the prescriptive humanitarian norm, to an unprecedented degree. The conflicting norm of force protection, however, showed the commitment to humanitarian principles, to be intense but also shallow.¹²²

A key factor in the decision to intervene in Somalia was the belief that, there was little risk of casualties. But, no soon did US troops begin to be inflicted with albeit the smallest number of casualties, by 1993, support for the operation, both within and outside the successor Clinton administration, had virtually eviscerated. The problem was that Somalia was never a cause for which, either the Bush or the Clinton administration, was prepared to bear the cross and carry the can for precious American military lives to be lost. When casualties began to mount, the reality that the US had no material interests at stake, quickly overwhelmed, any commitment to moral norms, and American troops were promptly withdrawn, leaving the UN mission treading water. The decision to withdraw from Somalia represents an ideational retreat, from which the US had not easily or earnestly recovered, as was witnessed, in the comatose inertia that swept the sole superpower of the time and the other major powers at the UN Security Council, all of whom shirked initiative, to address Rwanda's slide into the abyss of an atavistic ethnic pogrom.

HUMANITARIAN INTERVENTION: OPERATION 'ALLIED FORCE' (KOSOVO)

Following on from the smouldering ashes of the atavistic virulence in the Former Yugoslavia during 1991-1995, which culminated in the inking of the historic but uneasy Dayton Peace Accords, came the next instalment of popular resentment against President Milosevic and his irredentist vision of an ethnically puritanical Serbian State. As the Kosovar Albanian predominant province of Kosovo within Serbia, rose in demand for secessionist self-determination, Serbian military structures came down heavily in an attempt to browbeat

¹²²Ibid, 59, p. 4

them into submission. The oppressive move was sought to be countered by the self-styled Kosovo Liberation Army (KLA), which adopted armed measures of resistance in apparent reprisal attacks. As the KLA dug in its heels, committing to nothing less than conclusive political independence for Kosovo, the vicious cycle of violence and counter-violence escalated into disproportionate brutality. An estimated four hundred thousand Kosovars were extricated from their homes and strewn across the landscape. As atrocities intensified, the UN Security Council seized itself of the matter and approved multiple legally binding resolutions under the framework of Chapter VII authority. These resolutions in their content, identified the festering humanitarian spectre as a threat to international peace and security, and demanded an urgent cessation of hostilities by the protagonists to the conflict. When negotiations broke down in the face of continued Serbian aggression and the failure to reach a peace agreement, NATO commenced ‘Operation Allied Force’ (OAF), and began bombing the Federal Republic of Yugoslavia, from the 20th of March, 1999.

What was at stake in Kosovo was an entirely new normative development for humanitarian intervention. Where Somalia had secured an express Chapter VII authorisation of force, in implementing a humanitarian mandate, Kosovo secured no such authorisation. Indeed ‘OAF’ was undertaken, despite the open knowledge that, the action did not have explicit UN Security Council consent, and even any implied latitude of consent was tenuous to say the least. As a result both Russia and China, permanent members on the Council, had declared the behaviour to be a flagrant breach of international law. Although the intervention in Northern Iraq similarly lacked overt authorisation, the standard of behaviour, was altogether quite different. Iraq was an intervention of humanitarian relief, Kosovo on the other hand was characterised as “humanitarian war”, wherein, for the first time a major use of destructive armed force had been undertaken, with the stated purpose of implementing UN Security Council resolutions, but, without Security Council authorisation.¹²³

Consequently the legitimacy of such behaviour became the subject of contention, the locus of which being, whether armed intervention could ever be legitimate, devoid of UNSC authorisation. So, how did the norm of humanitarian intervention develop over Kosovo? Why did NATO member states undertake the operation, and indeed, why did others oppose it? And finally, was the operation legitimate, and what did it mean for the legitimacy of the norm?

The strongest appeals for the legitimacy of the intervention were based, on a moral normative context. Despite this motive, the Kosovo intervention highlights the self-interest

¹²³Susan Woodward, ‘Humanitarian War: A New Consensus’?, *Disasters*, vol. 25, no.4, 2002, p. 334.

that NATO had, in preventing the conflict from causing a mass refugee crisis or even sparking an outright war. Despite interventions in Northern Iraq and Somalia, the dilated and insufficient action in Rwanda and slothful intercession over Bosnia, undermines claims that, the norm of humanitarian intervention was, or indeed is, anything other than a convenient cover for securing material interest. Indeed, the naysaying critics of NATO, notably Cuba, argued that, the intervention was precisely *realpolitik* in action, a function of the US-led unipolar era that had set and settled in, a charge all the more prescient when the means of intervention, airstrikes, were employed, precisely because, they minimised the material risk despite increasing the risk of civilian casualties.

However, as with Iraq, a purely materialist analysis obscures the ideational dimension to humanitarian intervention, and potentially underestimates the causal and constitutive effect of the norm. The failure to intervene in Rwanda and Kosovo cannot be evidentiary proof enough, for the ‘derivative’ character of norms. As has been noted earlier in this Chapter, norms are ‘permissive’, and whilst they influence state interests, they do not guarantee the pursuit of these interests, overall others, on all occasions’. Identities are complex, and influenced by the impact of multiple norms, some of which of course prescribe material interests. From the vantage point of a Constructivist framework, the conclusion cannot be drawn that, the norm is purely incidental, rather that, the norm does affect state identity and interest, but in the cases of Rwanda and Bosnia, it was not enough in relation to material interests. Furthermore it could be argued that, because intervention was the standard of appropriate behaviour in Bosnia, NATO members suffered socialisation pressures, which influenced their identities and interests, a sense of moral conscientiousness that stoked indulgence, having idled at the wheel for four long years, as Bosnia lacerated and tore-asunder.

EXAMINING IDENTITY, INTERESTS AND STRATEGIES AT LEGITIMATION

Through the Constructivist framework, one can see prior to OAF, the extent to which humanitarian intervention had become established as a legitimate norm, influencing the behaviour and identity of states. As Belgrade began its crackdown on the Albanian Kosovars Secretary of State Madeline Albright, began to “lead through rhetoric”, mobilising a strong international response in backing. Preceding any UNSC deliberations, Secretary Albright declared, that the US would not twiddle by idly, in the face of metastasizing atrocities,

manifesting itself.¹²⁴ Other member-states like Germany were less openly coercive, yet called publicly for cessation and diplomatic intervention. The UNSC adopted two Chapter VII resolutions, viz., UNSCR 1160 on 31st March 1998 and UNSCR 1199 on 23rd September, 1998, declaring the situation to constitute, a threat to international peace and stability.¹²⁵ They called on both the Kosovo Liberation Army (KLA) and the Federal Republic of Yugoslavia (FRY), to desist from hostilities and introduced an arms embargo, with the sternest language emanating from Resolution 1199.¹²⁶ The landmark normative development in Northern Iraq, of interpreting a domestic humanitarian crisis as a threat to international peace and security, was by this stage an accepted standard of behaviour. It demonstrates, following from Iraq and Somalia, the reconceptualization of the balance, between humanitarian intervention on the one hand and norms of sovereignty on the other. It was becoming ever more accepted that, the principle of non-intervention was not sacrosanct, if it permitted governments to massively abuse human rights within their borders'. However the resolutions stopped short, primarily due to Chinese and Russian opposition, of containing the wording "all necessary means", as was sought by the UK and US, and being the consensually accepted phrase by which the UNSC authorises force.¹²⁷ The Russians in particular, emphasised that any armed intervention would be vetoed. This resistance, coupled with the worsening humanitarian situation, led to discussion amongst the NATO members about potential intervention without UNSC authorisation and in the face of opposition. NATO members began publicly threatening the FRY with airstrikes and began the act of providing potential justifications any future, unauthorised intervention. On October 13th, NATO members further showed their intent when all sixteen of them unanimously gave the go-ahead for the bombing of FRY targets. Despite a temporary break-through in that month, peace negotiations eventually fell through resulting in NATO's unauthorised bombing campaign.

Through on-setting the military intervention, NATO had pushed the norm of humanitarian intervention, in a new direction, in that, their actions and justifications assumed the role of norm entrepreneurs, engaged in strategies of legitimation, and drawing on both the legal and moral normative context. The overt defence of NATO was that of legality,

¹²⁴Robert DiPrizio, *Armed Humanitarian Interventions: U.S Interventions from Northern Iraq to Kosovo*, (Baltimore: John Hopkins University Press, 2002), p.136.

¹²⁵See United Nations Security Council Resolution (UNSCR) 1199, 23 September 1998, United Nations, New York. <http://www.un.org/peace/kosovo/98sc1199.htm>

¹²⁶Mary O'Connell, *The UN, NATO, and International Law After Kosovo*, *Human Rights Quarterly*, vol. 22, no.1, 2000, p.75

¹²⁷Heike Krieger, *The Kosovo Conflict and International Law: An Analytical Documentation 1974-1999*. (Cambridge: Cambridge University Press, 2001), p. 337.

identifying the two main legal arguments, viz., that previous UN Security Council resolutions could be construed to lend some authority to NATO's actions; and that, principles of general international law provided for a right of intervention, on the grounds of "overwhelming humanitarian necessity".¹²⁸ However given the tenuous legal ground, the clear subtext of the interventions justification, was strongly grounded in appeals to morality, by most of the NATO member-states. Prime Minister Blair argued that the intervention was "not for territory but for values",¹²⁹ President Chirac remarked that, "the humanitarian situation constitutes a ground that can justify an exception to a rule, however firm and strong it is",¹³⁰ whilst President Havel (1999) stated it was legitimate on the grounds it was an 'ethical war' undertaken "out of respect for the law, for a law that rank higher than the law that protects the sovereignty of states, that is, the higher law of human rights".

Domestic normative environment of states provides further rationale, for state behaviour and interest. The international normative environment shaped the policymaking of the Blair government, which in turn, would then drive change in international normative environment. Under Prime Minister Blair, there was discursive erasure of the domestic/international distinction, such that, principled beliefs regarding the needs of 'strangers', played an increasingly crucial role.¹³¹ More important, though, were causal beliefs about the impossibility of containing developments and threats emerging in geographically distant places. The 1990s sociology of 'globalization', and the imaginary of the borderless world, had a real impact on New Labour's foreign policy.¹³² Furthermore, the distinction between the inside and the outside of the nation-state was blurred, by the way in which domestic policy formulas have been projected, internationally. However, despite their interests and their strategies to legitimate them, more so than was the case in Northern Iraq, these strategies, were cogently challenged. Where Iraq achieved a tolerable consensus, largely by normative appeal, it was not the case in Kosovo. Those who supported the NATO action, sought to legitimize it as legal, while additionally in support of humanitarian objectives; those who opposed it, viewed it as illegal, whatever the moral grounds, and hence denied its claim to legitimacy.

¹²⁸Dino Kritsiotis, 'The Kosovo Crisis and NATO's Application of Armed Force against the Federal Republic of Yugoslavia', *The International and Comparative Law Quarterly*, vol. 49, no. 2, p. 339.

¹²⁹ Paul Binyon, Britain Gives Airstrike Warning to Belgrade. *The Times*, 13 March, 1998.

¹³⁰ Ian Clark, *Legitimacy in International Society*, (Oxford: Oxford University Press, 2007), p.213.

¹³¹ *Ibid*, p.54.

¹³² Tony Blair, 'Doctrine of the International Community', Speech by the British Prime Minister to the Economic Club of Chicago, Hilton Hotel, Chicago, USA, 22 April 1999. <https://www.globalpolicy.org/component/content/article/154/26026.html>. (Accessed on 14 January 2020)

LEGITIMACY AND NORM DEVELOPMENT

The Constructivist paradigm allows us to interpret the identity, interest and behaviour of the NATO states, as being affected by the normative context. Influenced by the norm of humanitarian intervention, along with domestic normative developments, it was in their ideational interest, to cease Serb atrocities, an interest no doubt compounded with material concerns. Confronting obstacles in the UNSC, NATO members acted as norm entrepreneurs, in attempting to legitimate humanitarian intervention, without UNSC consensual approval. But, what do these events, however mean, for the development and legitimacy of the norm? Did Kosovo mark the elevation of humanitarian intervention above that of sovereignty; the legitimacy to intervene in humanitarian cases, even without UNSC approval?

Arguably, this can be a conclusion drawn. Russia, along with Belarus and India, tabled a draft resolution condemning NATO's intervention as a violation of the UN charter, demanding a cessation of hostilities, which was voted down resoundingly by a 12:3 margin, with only Russia, China and Namibia, voting for the motion in the Council. Furthermore, as 'Operation Allied Force' wound-down, the UN Security Council passed Resolution 1244, authorising relevant international organisations, to establish an international security presence in Kosovo, with all necessary means. By achieving a majority consensus of all NATO members and the majority of the UNSC, the implication was indeed that, in the face of humanitarian crisis, intervention, even without UNSC authorisation, was legitimate.

Additionally Kosovo spurred-on an increased discourse in international relations, about the dialectic relationship between canonical tenets of sovereignty and customary norms of humanitarian intervention. Most prominently, the International Commission on Intervention and State Sovereignty (ICISS), published a Report, enjoining criteria, to legitimise humanitarian intervention over sovereignty, even without UNSC approval.¹³³ However a more pertinent conclusion over Kosovo is that, whilst a legitimate instance of humanitarian behaviour did not emerge and sustain, a new normative development allowing for humanitarian intervention overriding sovereignty without UNSC approval. By implication the unauthorised intervention gained legitimacy as the UNSC, or indeed any significant grouping of states, did not form a consensus against the action. However during the events surrounding Kosovo the statements made by the NATO governments were for the most part based on the proposition that Kosovo was an exceptional case.

¹³³The International Commission on Intervention and State Sovereignty (ICISS) Report, 'The Responsibility to Protect', 2001, <http://responsibilitytoprotect.org/ICISS%20Report.pdf>, (Accessed on 18th December 2019).

Throughout the preceding years, the international community had internalised and recognised the legitimacy of the norm of humanitarian intervention, in the constitutional context of the UNSC. Norms of sovereignty and humanitarian intervention were reconciled in this context. Potentially the constitutional normative setting in 1999, allowed for Kosovo to be a considered a legitimate action. The whole of Europe carried the burden of the non-too illustrious role in Yugoslavia during the 1990s, but also the more positive memory of NATO's eventual role in Bosnia. Combined with the morality of the situation, along with the large consensus of states that wished to address the crisis, the resulting acceptance was arguably less tacit a legitimisation, and more that they understood the political context within the Council, that had forced NATO to act without authorisation.

NORM'S LEGITIMISATION: INFLUENCING CONSTITUTION OF BEHAVIOUR

'Legitimacy', though much favoured a nomenclature in the practitioner's lexicon, has nevertheless remained widely ignored, in the academic discipline of international relations, to the point where it has been alluded to as "under-theorised" in global politics.¹³⁴ Possibly, the supposed anarchy of the international system has tended to make the dimension of 'legitimacy', within the international sphere, redundant? While such an understanding would be a Rationalist perspective, where all averment to legitimacy, is but a simple reflection of material interests, the Constructivist's logic of appropriateness, implies that, actors comply with norms, because, they accept them as legitimate. The advancement of a norm through its life cycle is synonymous, with the acquisition of legitimacy. Norm entrepreneurs attempt to present an emerging norm, as being legitimate; its growing legitimacy is then, the product of successful consensus-building. Legitimacy can thus be considered to be the language and currency of norms.¹³⁵

Within the normative paradigm, the Legitimacy of a norm is a process by which, norms emerge and are adhered to, much different to them being construed, as inherently reposed. This process helps further the understanding of competing norms, evident in the case of the friction between, norms of sovereignty and those of humanitarian intervention. The fact remains, that, new norms never enter a normative vacuum per se, but instead emerge, in a highly contested normative space, where they must compete with other norms. To that extent, the legitimacy of a norm can be envisaged, as a contested political process, drawing upon

¹³⁴Adrian Gallagher, *Genocide and its Threat to Contemporary International Order*, (Houndslow: Palgrave Macmillan, 2013), p. 58.

¹³⁵Christopher Gelpi, *The Power of Legitimacy: Assessing the Role of Norms in Crisis Bargaining*, (New Jersey: Princeton University Press, 2003), p. 12.

both existing norms and material power, the upshot of which is a legitimate norm, accepted by international society, as a tolerable consensus upon which to commandeer action. This framework, elaborates, on both the ‘procedural’ (rightful source of authority) and ‘substantive’ (respect and regard for means and ends) aspects of legitimacy, and develops the concept of how norms attain legitimacy, and, by extension, how they influence behaviour.¹³⁶

To understand how norms work, one needs to understand the complexity, contradictions, and indeterminacy of the larger normative system, in which political action takes place. When norm entrepreneurs seek to persuade other states to adopt an idea, there must obviously be a point of reference for such persuasion. Efforts to promote a new norm, take place, within the standards of appropriate behaviour, as defined by prior norms and attempts to either promote new behaviour, or to legitimise it, are made by drawing on existing norms of morality, legality and constitutionality. Such behaviours are termed ‘strategies of legitimation’ and highlight ‘actor agency’, besides going on to showcase, the ‘mutually constitutive effect of the existing normative structure’. Legitimacy is, to a degree, what states make of it, but, not entirely so either, as the international society is constrained, by shifting normative pulls, even as it helps to push in new directions, by its own political projects.¹³⁷ This summary evokes and parallels the mutual constitution of norms and behaviour in the norm life cycle, and one can see that, actors have agency in the development of norms in an attempt to appeal to legitimacy, but that, their behaviour is influenced, by the legitimacy of existing norms.

The role of legality, in the process, is most evident, as norm entrepreneurs draw on the existing legal normative framework, in relation to humanitarian intervention. During the Kosovo intervention, NATO members attempted to legitimise their novel action, conducted outside of the UN Security Council, by drawing on the existing firmament of laws. A common misunderstanding here is to consider legality and legitimacy, as synonymous, because, such conflation limits explanations for change, in the international system. Indeed, quite frequently in international relations is there reference to behaviour as being legitimate, even if it is illegal.¹³⁸ Here the role of morality reveals itself. Situations can arise, where an alternative moral practice develops, one that secures approval, but breaks existing law.’ Again, the NATO intervention in Kosovo comes in handy for consideration, as an operation that was held to be technically illegal, yet, perceived to be politically and morally legitimate.

¹³⁶David Beetham and Christopher Lord, *Legitimacy and the European Union*, (London: Longman, 1998), p.3.

¹³⁷Alexander Wendt, ‘Anarchy is What States Make of It: the Social Construction of Power Politics’, *International Organisation*, vol. 46, no.2, 1992, pp. 395-396.

¹³⁸Ian Hurd, ‘Legitimacy and Authority in International Relations’, *International Organisation*, vol. 53, no. 2, 1999, p. 381.

When actors attempt to legitimise their actions, they not only draw on legality, but also morality. Lacking the physicality of legal norms makes, the identification of moral norms formidable, but one can see indirect evidence of them, through observing rhetoric and behaviour. President Clinton and Prime Minister Blair were conspicuous, in their oft-repeated references to the Kosovo intervention, as being ‘just’, ‘necessary’ or for moral ‘values’. These passionate appeals, demonstrate the existence, at least in part, of moral normative value, in legitimating behaviour and norms.

The ‘Constitutionality’ of a norm, is a somewhat ambiguous position, where, it is understood as standards of appropriate behaviour, based on mutual expectations and circumstance. It represents a normative influence, not necessarily based, either on law or morality, similar to the early eighteenth century norm of ‘balance of power’, which was neither moral nor legal, but informed and legitimated behaviour or the ‘European Great Power Concert’, which demonstrated a norm of consultation between the great powers, that was neither legal nor moral, yet, still legitimated behaviour. A normative appeal, on its own, does not constitute legitimacy. Legitimacy may be considered as the political space, marked out by the boundaries of legality, morality and constitutionality, but, because they can pull in incompatible directions, an accommodation needs to be struck between them, in order for a norm to be considered legitimate.¹³⁹ In reaching this accommodation, the process of legitimization has to grapple and reconcile with the role of power in norm dynamics. If legitimacy or rather legitimate norms influence the exercise of power, then, material power with its ability to accomplish interests, can itself influence, the legitimation process of norms. Even where interests are not material, actors may very well wield material power, to achieve non-material interests.

INTERVENTION IN NORTHERN IRAQ– OPERATION ‘PROVIDE COMFORT’

As the Cold War was winding down with the dissolution and dismemberment of the Soviet Union and quick on the heels of the resounding defeat of Saddam Hussein’s Baath army, repulsed and dispossessed of their indefensible aggression and invasion in Kuwait, at the hands of the UN authorized and US-led multinational coalition in Operation Desert Storm, sensing an opportunity, insurrectionist Kurdish groups in Northern Iraq and Shiite rebels in the South of the country, sprung-up in contumacy, against what it perceived at the time, to be

¹³⁹The most common manifestation of moral value in legitimating behaviour, comes in the form of ‘Just War Theory’, an alternative moral value to which situates itself along Kantian lines, postulating that, there are pervasive ‘moral imperatives’ amongst humanity, to protect the innocent.

an attenuated and effete Iraqi regime, that could possibly be pushed over the cliff. But the Saddam regime, far from atrophying, was still brutally resilient enough, to react decisively to this security challenge. Multiple units of the elite Republican Guard were dispatched to staunch the rebellion in the North and South of the country, and within weeks the resistance had been crushed, forcing an estimated hundreds of thousands of Kurdish civilians in the North, to fleeing into the mountains straggling the Turkish and Iranian borders, precipitating an apparent portending humanitarian disaster, of untold proportions.¹⁴⁰Notwithstanding the Middle East, which, on account of its criticality to global energy security and an enduringly contentious and polarising US role within the region, invariably remains in the eye of the international media, not to mention the recently completed military prosecution of the Iraq-Kuwait Gulf War, that left media scrutiny still afresh, witnessed immediate and intense media coverage of the massive Kurdish human suffering unfolding. The consequent conditioning of public opinion, in the US and across the wider swathe of Western society, leaned on the policymakers to basically do something, with a view to forestalling the abhorrence, which was to befall.¹⁴¹

Kurdish secessionism from Iraq and Turkey towards creation of a Greater Kurdistan State, carved out of the contiguous areas of Northern Iraq and Southern Turkey, has been a running bed sore in politico-diplomatic and security management within the region, and this fault-line resurfaced, threatening to destabilize the Middle Eastern subset, even provoking a collateral conflagration of conflict. With a marooned population massed on their borders, the apprehension of them teeming over into Turkey and Iran, spurred Ankara and Tehran to swiftly move the UN Security Council, demanding concerted international action in earnest. Turkey and France (a country known for its liberal interventionist empathy and stance on humanitarian and refugee related issues of concern, and supportive of the notion of a *droit d'ingérence*, or 'right to interfere' for humanitarian reasons, in context such as this), co-sponsored and tabled a draft Resolution, for urgent adoption by the Council. While this version of the Resolution did not find the requisite traction and fell through, it propelled action around the horse-shoe, such that, a landmark resolution (UNSCR 688) was adopted on 5th April 1991.

In all fairness, the humanitarian disaster that beckoned on the Northern frontier of Iraq, and in the Southern section of the country, wasn't exceptional even when contextualised

¹⁴⁰Helena Cook, *The Safe Havens in Northern Iraq*, (University of Sussex: Human Rights Centre, 1995), p. 35.

¹⁴¹The famous 'CNN effect' was at work, in influencing the public and policy-makers of States. See Larry Minear, et al., *News Media, Civil War, and Humanitarian Intervention*, (London: Lynne Rienner, 1994), p. 52.

in the historical sweep of the Post WW II epoch, alone. Gross infractions of human rights and perpetration of genocide or akin acts of savagery punctuated the globe, from Chile, Guatemala, and El Salvador in the Americas, to Uganda and Tanzania across Africa, and Cambodia and East Pakistan (liberated as Bangladesh) within Asia, to name a select few, all of which met with some hue of outside intervention, but, were never construed or formally designated as ‘humanitarian intervention’, per se. Even where specific invoking reference was made to the humanitarian dimension of the external act at addressing the malevolence, viz., India’s intervention in East Pakistan in 1971, the contention was resolutely rejected, as lacking sufficient standard of appropriateness in disposition, to merit such a characterisation. When examined and assessed in this backdrop, the passage of UNSCR 688, in terms of the connotation of its articulating formulation, instructive messaging, and content-configuration, exudes salutary, and is reflective of a watershed moment in the moral compass of international society. UNSCR 688 waded its way down an un-trodden path, by formally terming the treatment meted out by Saddam Hussein vide his military force structures to minorities within his country, as constituting a “threat to peace and security”, and demanded categorical beneficent performance by the sovereign Saddam regime, casting an expectation upon it, to either provide for humanitarian assistance of his own accord, or to facilitate the work of international humanitarian relief agencies.

If anything, this established that the UN process which had already commandeered a multinational military operation against the Saddam regime and the Iraqi state to restore status quo ante vis-à-vis its regressive action in Kuwait, was neither prejudiced in its latest determination and demand of suitable remedial action from the sovereign government of Iraq, nor was it presiding over a process that represented a headlong rush to war. This makes for logical and reasoned explanation to assuage skeptics who have doubted the posited seminal nature of SCR 688, citing the lack of any explicit authorization measures under Chapter VII authority, to trammel the Saddam regime’s vile intent and reprehensible actions. To that extent, it is contended by the critics that, the unprecedented military operation mounted by the United States, United Kingdom and France to fulfil the terms of UNSCR 688, against the will of the sovereign Iraqi government, in a matter that constituted inherent ‘domestic jurisdiction’, was an exercise in militaristic adventurism, and a flagrant overreach of the brief vested in them, by the express provisions set out in UNSCR 688, an all too familiar peccadillo in Western states’ demeanour from time to time. The counter to this stems from the fact that the treatment of his minorities by Saddam Hussein was not a novel disclosure, having been an

abiding part of mention in a series of UN Security Council Resolutions adopted in reference to his regressive actions, including the fact that his intrepid gambit to gas his own people in the Kurdish town of Halabjah back in 1986-87, was not lost on anyone, albeit that, there was muted international outrage at the time, ostensibly due to the enveloping bipolar Cold War persisting, and the underpinning of Saddam's Iraq being a propitious ally of the West in his eight year war with Iran.

While that did not absolve the international community, most notably the West of inexcusable blame, it does not detract from the exalted nature of the process leading to UNSCR 688 either, which was now clearly enjoining and stipulating a budding norm of sorts, that mistreatment of human rights of a state's own civilians, was neither fair game, nor a matter of inalienable domestic jurisdiction, otherwise tantamount to pandering to sovereign-impunity in the garb of sovereign-immunity.

The fact of the Security Council's denunciation of the repression in Northern Iraq, its invocation as a cause imperilling peace and security, in light of the Iraqi regime's recidivist profile as a repugnant human rights violator, constituted sufficing legitimation, for requisite punitive actions to be undertaken, to rectify the egregiousness. All said, UNSCR 688 which had passed muster by a margin of 10:3:2 (10 votes in affirmation, three adverse, and two abstentions to boot), leading to the commissioning of Operation 'Provide Comfort', broke new ground, in that, for the first time a group of states, at the heart of the premier global body, primed for establishment and sustenance of international peace and security, had publicly justified the use of force, in terms of enforcing compliance with a Security Council Resolution, on a dossier that pertained to demanding scrupulous respect for and beneficent enjoyment of human rights by all citizens of sovereign state at the hands of its government, a subject-matter conventionally understood to be of 'sovereign domestic jurisdiction', and beyond the remit of sovereign external actors.¹⁴²

Notwithstanding the claim of a discernible impulse and streak of humanitarianism, inducing the Security Council to act, it's quite plausible to also regard the complementing role of a certain degree of national interests' pragmatism too, which should leave the rationalists, enthusiastically heady. After all, Turkey was and is a NATO member, much more fervent and intimate American ally then, than it is today, so US effusiveness to get involved to address the

¹⁴²M. Kelly, *Ghosts of Halabja: Saddam Hussein and the Kurdish Genocide*. (Westport: Praeger, 2008), pp. 45-46.

Kurdish spill-over that could have aggravated the separatist issue, is most comprehensible. This said, the US which was understood to have harboured thoughts of purging Saddam during its coalition air blitz and infantry advance during the Iraq-Kuwait Gulf War, but is believed to have yielded to implorations by fellow Arab leaders, was now working to defang and defenestrate Saddam and his Baath army's capabilities to mount any further invasions along the lines of what had transpired in Kuwait. To that extent, UNSCR 688 may have come in handy, in that, the intransigence of the Saddam regime allowed the Western states to carve-up the flexible mechanism of No-Fly Zones (NFZs), an unprecedented occurrence of foreign states coercively attenuating a sovereign country's ability to access the full scope and dimensions of its own sovereign air space, argued at the time, to be a necessary evil, aimed at precluding Iraqi air assets, from emasculating Kurds in the North and Shiites in the South. Given how controversial a reading this made for, within the inveterate traditions of the UN and its relationship to sovereignty of its member-states, no wonder then that, such a measure had not been formally incorporated within the Charter provisions of the world body, although, the instituting of the NFZs over Iraq was retroactively legitimized by UNSC resolutions, with the mechanism, seemingly have lapsed into disuse, being revived more recently, in the context of prosecuting the purported humanitarian intervention in Libya.

In consonance with the process by which UN Security Council resolutions find passage, it's no turn-up-for-the-books to find surmising mention that, in order for UNSCR 688 to go through, express linkage of the transpiring situation within Iraq to a 'threat to peace and security' was virtually insisted upon, by the good measure of member-states in the Council. The UN Charter has invariably held inter-state conflicts and their concurrently unravelling ramifications to be 'threats to international peace and security'. Hence it required a nuanced interpretation of continuity and change to construct an ideated connect in discourse and politics, one which drew on past Iraqi regime treatment of its minorities, including during the war with Kuwait as trigger at one level, but more importantly, held the forced migration of Kurdish refugees across into neighbouring countries, borne of degrading Iraqi regime actions against them, as simple linear causation in consequence. On 4th April 1991, barely a day before the eventual resolution found approbation, the French Foreign Minister called for a "duty to intervene", in pressing for sanctioning of enforcement action under Chapter VII, by appealing simply to the moral context of the situation.¹⁴³ This draft however, failed to garner adequate support and the eventual redrafted Resolution, required an explicit reference to

¹⁴³H. Yamashita, *Humanitarian Space and International Politics*, (Aldershot: Ashgate Publishing Limited, 2004), p. 41.

“international peace and security” in order to placate most members of the Council, who worried about potential legitimacy and fallout of endorsing such action.

As for why there was no real opposition to the intervention, despite the concerns voiced, one could surmise a couple of possibilities. As for Russia and China, neither of them wanted to proceed beyond stating their contention on record, for fear of lingering collateral consequences of confronting the unipolar superpower of the time, the US. No wonder then that, their rhetoric did not square-up with reality, in an instance that reminds us of E.H. Carr’s material understanding of the concept of legitimacy, viz., as being the product of preponderant nation or constellation of such dominant nations.¹⁴⁴ But why this particular crisis, at this particular time, suddenly factored into the strategic calculations of France, the UK, the US, Belgium, or any other state? In 1971 the case was made that, the genocide in Bangladesh constituted a threat to international stability, yet, with the exception of the meagre support offered by Italy and France, there was no suggestion that, states who were not involved, considered humanitarian disasters, as affecting their material interests.¹⁴⁵ Even if it is conceded that, material interests are the driving force behind the behaviour (and subsequent norm emergence), but, what purpose did the extensive morale rhetoric serve? One could possibly draw the conclusion that, they acted as a ‘Trojan horse’. However one could equally draw the conclusion that the legal, material rhetoric, acted as a Trojan horse, as it were, for the ideational interest.

Indeed many have made that analysis, with Tesón, arguing that, aside from word games, this is still a human rights issue. Nevertheless, a reasonable interpretation of UNSCR 688 is that, the Security Council was centrally concerned with the human rights violations, themselves, and the reference to the threat to peace and security, was added for good measure.¹⁴⁶ Again, even if rhetoric is to be accepted as covert rationale, still, for morale appeals to have any basis or effect, they must inherently possess some causal power. There is no doubting that states had material interest in the case of Iraq, however, these interest are part of a wider complex identity, which is not solely reducible to materialism. This notwithstanding, the role of a slew of norm entrepreneurs, influenced, by the prevailing domestic and international normative environment, persuading and forging a powerful

¹⁴⁴E. H. Carr, *The Twenty Years Crisis 1919–1939*, (London: Macmillan, 1939), p. 111.

¹⁴⁵David Malone, *The International Struggle Over Iraq*, (Oxford: Oxford University Press, 2006), p. 87.

¹⁴⁶Fernando Tesón, ‘Collective Humanitarian Intervention’, *Michigan Journal of International Law*, vol.17, no. 2, p. 344.

consensus by drawing on the existing legal, moral and constitutional normative context, is also evident and ought to be examined.

The initial response to the crisis transpired, according to traditional norms of state interaction. President Bush declared the matter an ‘internal affair’ of the Iraqi state, joined in by the UK. Seemingly the consensus amongst states was that, intervention in the humanitarian crisis would be illegal. It is at this point, however, that France materialised as a norm entrepreneur, spearheading coordination to prevent the crisis. The French concurred with the legal assessment, that to intervene to assist the Kurds, would constitute illegal interference in Iraq’s internal affairs, but they suggested that, they would attempt to change the law, to allow for such an intervention, even suggesting that whilst the law was sacrosanct, but the safeguard of a population distressed and in imminent danger of being purged, was something, at least as precious, if not more.¹⁴⁷ The emergence of France, as a norm-entrepreneur, can clearly be linked, to the interplay of international and domestic influences. The humanitarian interests of the French, reflected, the demands of a growing constituency within French society, which held that sovereignty should be no barrier to the relief of suffering. This was based on the ‘droit d’ingérence, a moral theory forwarded, by the French non-governmental organisation Médecins Sans Frontières (MSF), advocating the right of victims to international assistance. Notably, the founding member of MSF, Dr. Bernard Kouchner, was at the time, the Minister for Humanitarian Affairs, and enjoyed the persuasive ear of President Mitterrand.¹⁴⁸

Media reporting of the intensifying violence and use of chemical weapons against the Kurds, public demonstrations in European capitals, and the continued moral appeals of the French culminated, in a noticeable shift in the positions and the identity of several states. Iran and Turkey, facing an influx of refugees, requested the United Nations Security Council (UNSC) take action on the legal basis of Chapter VII, arguing that the situation was a threat to international peace and security. On 5th April 1991, France jointly tabled UNSC Resolution 688, with co-sponsorship from the UK, the US, and Belgium, condemning the “the repression of the Iraqi civilian population”, whilst constituting the situation, as a threat to “international peace and security”.

In these details lie, a perfect manifestation of the ‘two-level norm game’ catering to the domestic/international hybridised dimension of the norm life cycle. The famous ‘CNN

¹⁴⁷Natalie Fenton, *Understanding the UN Security Council: Coercion or Consent?* (Bodwell: MPG Books, 2004), p. 40.

¹⁴⁸Mary Kaldor, ‘A Decade of Humanitarian Intervention: The Role of Global Civil Society’, in H. Anheier & M.K.M. Glasius (eds.) *Global Civil Society*, (Oxford: Oxford University Press, 2001), p. 131.

effect' too, was at work, in influencing the public and policy-makers of states, to come to appraise and appreciate the situation as a "threat to international peace and security". Paragraph three of the Resolution was particularly instructive, in directing the state of Iraq, to allow immediate access for international humanitarian organizations to all those, in need of assistance, in all parts of Iraq. Although not expressly invoking Chapter VII, but, by drawing the link of humanitarian emancipation and the lack of it constituting a threat to peace and security, it opened the door ajar to intervention, and amounted to setting a precedent. By advancing such connect, the UK, the US and Belgium, can be seen to have joined France, in acting as norm-entrepreneurs. One can also witness the strategies of legitimation, adopted and employed by the norm entrepreneurs, in respect of UNSCR 688. Along with adducing legal invocations to Chapter VII, Britain and France drew on the moral context, claiming that massive human rights violations become 'a matter of international interests', when they 'assume the dimension of a crime against humanity'.¹⁴⁹ Additionally the UK, Belgium and France invoked the 1949 Geneva Convention, and several other states made explicit mention of Iraq's general noncompliance with international human rights instruments. Conversely, along with Cuba, Yemen and Zimbabwe, Russia and China also voiced concerns, over the legal implications for state sovereignty. The resolution ultimately passed with ten (10) votes in favour, three (3) against (Cuba, Yemen, Zimbabwe), with two (2) abstentions (China, India), to boot. Through the passing of the resolution, the norm entrepreneurs established a precedent, in linking domestic humanitarian issues to the international domain, as threats to international peace and security, and in doing so they brought the issue of humanitarian intervention to the vanguard of international concern and legal discourse.¹⁵⁰

The deliberations over UNSCR 688 could effectively be distilled, into three sets of positions, adopted by the member-states, on the issue. During the deliberations of the Resolution three positions arose. The first – that included France and UK, was that of an expressly moral position, invoking interventionist rhetoric, and arguing that, flagrant violation of basic human rights could not be left unchecked, by the international community. The second – comprising the former USSR and the US, though supportive of the resolution and stressed concern for human rights, nevertheless maintained that, the legitimacy of the resolution lay, in the legal normative basis of the threat to peace and security. The third group,

¹⁴⁹Jane Stromseth, 'Iraq's Repression of Its Civilian Population: Collective Responses and Continuing Challenges', in L. Damrosch (ed.) *Enforcing Restraint: Collective Intervention in Internal Conflicts*. (New York: Council on Foreign Relations, 1993), p. 78.

¹⁵⁰Judy Gallant, 'Humanitarian Intervention and Security Council Resolution 688: A Reappraisal in Light of a Changing World Order', *American University International Law Review*, vol.7, no. 4, 1992, p. 833.

consisting of the likes of non-permanent member states such as Cuba, Yemen, and Zimbabwe, resolutely rejected the resolution, claiming that, any talk of intervention, constituted illegality, under Article 2 (7) of the UN Charter.¹⁵¹

As the US, UK and France began convening the supply of humanitarian relief operations, it became apparent that, the continued attacks by the Iraqi forces on the Kurds would mean that, relief operations could not be realised, without additional coercively buttressing measures. The US would have been expected in the normal fitness of things, to make the play, however, President George H.W. Bush was admittedly sceptical about whether pursuing the plan of ‘Safe Haven’ corridors with boots on ground would suck Washington into a high quotient of casualties. It’s only after the UK and the broader community of European allies agreed to be part of it, and to even steer it, and the cover strategy of No-Fly Zones (NFZs) air-patrols was devised, that allayed Bush’s apprehensions, and subsequently persuaded him, into signing-on to a joint military task force, designed to provide humanitarian relief, under ‘Operation Provide Comfort’.¹⁵²

Naturally Iraq refused permission, and given the dearth of explicit mention of force in UNSCR 688, the intervention was not explicitly authorised by the UNSC. UNSCR 688, in all its considered wisdom, did not invoke an authorization under Chapter VII, for the purpose. Instead, it only insisted on definitive need for unfettered access, towards purveying humanitarian relief, to those in distress. Proponents of future UN Security Council Resolutions, embarked, on iteratively invoking the same formulation, viz., “threat to international peace and security,” and began insisting that crises had metastasized, to manifest as such. The repetition of this phrase, by advocates of the Norm of Humanitarian Intervention, forms a critical part of qualifying for Norm Emergence. From UNSCR 688, the norm of intervention, in proffering succor and sustenance of those oppressed by their own governments, emerged, and it was widely perceived that, ensuing UN resolutions would not be blighted by issues, stemming from a lack of a formal invocation of Chapter VII framework, in pursuance of an express authorization to use coercive armed force. Nonetheless Operation Provide Comfort was implemented, involving twenty thousand (20,000) troops, drawn from thirteen (13) contributing member-states. Invoking paragraph six of Resolution 688, which “appeals to all Member States and to all humanitarian organisations to contribute to these humanitarian relief efforts”, the intervening states claimed that, this provision legally

¹⁵¹Carol McQueen, *Humanitarian Intervention and Safety Zones*, (Houndsmills: Palgrave Macmillan, 2005), p. 36.

¹⁵²Sean Murphy, *Humanitarian Intervention*, (Philadelphia: University of Pennsylvania State, 1996), p. 173.

justified the deployment of troops.¹⁵³ Additionally paragraph three was also used to requisitely pad-up the purported legal basis. Both the French and the US also appealed to a moral normative standard, to justify the intervention. President Bush, talking on the operation, stated clearly “I want to underscore that, all we are doing is motivated by humanitarian concerns”. Not surprisingly President Mitterrand also invoked a strong moral justification, claiming “today, when we observe flagrant human rights violations on a massive scale, we cannot stand idly by. We have a duty to put a stop to these situations”. British Foreign Secretary Douglas Hurd, perhaps summed-up the combined moral and legal normative appeals of the norm entrepreneurs, when he said “Not every action, that a British, or an American, or a French government takes, has to be underwritten, by a specific provision in a UN resolution [...] no one who has looked at Iraq, can doubt extreme humanitarian need [...] We’re clear, the French are clear, the Americans are clear too, on a strong legal as well as humanitarian ground”.¹⁵⁴

By justifying the intervention on humanitarian grounds, both legal and moral, this could be considered the genesis of the humanitarian intervention norm in the contemporary international system, since, this was the first time since the founding of the UN that a group of states had explicitly defended the use of force in humanitarian terms. However despite the justifications of the intervening states, the lack of an explicit Chapter VII resolution, meant that, the legal stance was on relatively thin ice, and vulnerable to being impugned. Yet, with the obvious exception of the target-state Iraq, no official objection or condemnation, was forthcoming; a surprising occurrence, given that many nations, even significant ones such as Russia and China, were on record as having denied Resolution 688, as a justification of forcible intrusion. Thus the US, UK, France and other supporting states projected their military into Iraqi sovereign territory, without Iraqi consent, but also without reproach, on the grounds of humanitarianism. A tolerable consensus was brokered and a norm was arguably legitimised.

Interpreting Iraq through the Constructivist framework, the normative appeals and consensus of those advocating humanitarian intervention succeeded, in legitimating the behaviour. Arguably the post-Cold War power-balance aided the process, with liberal Western states lead by the United States, being able to project arguably unbridled power in a

¹⁵³Nigel Rodley, ‘Collective Intervention to Protect Human Rights’, in N. Rodley (ed.) *To Loose the Bonds of Wickedness*, (London: Brassey’s, 1992), p. 33.

¹⁵⁴Thomas Weiss, *Military-Civilian Interactions: Humanitarian Crises and The Responsibility To Protect*, (London: Rowan and Littlefield, 2005), p. 64.

relatively unhindered manner, in the implementation of the intervention. Constructivist analysis further draws the conclusion that, Northern Iraq was the development of a legitimate norm, which, socialised other states and influenced their behaviour. In the context of Iraq and Operation 'Provide Comfort', it's debatable whether the emergence and application of a nascent norm of humanitarian intervention, was indeed comprehensive. This since, all that the process leading to actual intervention did in the main, was to elicit, by applying regulated form of duress upon a stubbornly resistant national government of the day, scope for safe and unfettered provisioning of humanitarian relief, to constituencies in distress. However, while the tenor of the operation might have been circumscribed, in the humaneness of its strategic objectives, in broad normative terms, the alacrity with which the international community (largely the Western world) stepped-up to the plate and responded to the plight of the Kurds and the Shiites within their sovereign frontiers, was emblematic of a qualitative shift in world opinion, across publicists and policymakers alike, that a rebalancing of the pendulum, long oscillated decisively in favour of inviolable and unabridged claims to state sovereignty, had swung back to careen on the side of an epochal appreciation of humanitarian needs, particularly when such clarion calls for assistance, from within sovereign entities to those in the extant, qualify as clamour, in pursuance of alleviating supreme humanitarian emergencies.¹⁵⁵

While member-states voting on UNSCR 688 and those outside the Security Council, repeatedly stressed their interest in having this intervention conducted in the mould of an exceptional measure, it's hard to overlook and even more formidable to obscure the precedential value of this instance of international involvement, given what was happening in the lead-up and accosting, and what ensued thereafter, as this interventionist action often got cited as evidence of an emerging norm, that has international society accepting that, the interests of individuals and peoples' takes precedence over those of states, when the proposition has them ranged, in apparently irreconcilable juxtaposition.¹⁵⁶

It was lost on none that, subsequent interventionist claims which met with favourable fruition in terms of action initiated, invariably drew on the logic of articulation, narrative-setting and strategic framing, that emanated from the politico-diplomatic drift leading to Operation Provide Comfort and the subsequent inception of 'Save Havens' and No Fly Zones

¹⁵⁵Lawrence Freedman and David Boren, 'Safe Havens for Kurds', in N. Rodley (ed.) *To Loose the Bands of Wickedness: International Intervention in Defence of Human Rights*, (London: Brassey's, 1992), p. 82.

¹⁵⁶Francis Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention*, (The Hague: Kluwer Law International, 1999), p. 156.

(NFZs). This so-called “ratchet effect”, wherein, courses of action once legitimated, become the basis for similar countenancing elsewhere, was visible in Operation ‘Restore Hope’ Operation ‘Allied Force’, where the template of broadening of the ambit of what encompasses peace and security quotient, and by extension, what constitutes a threat to it, became a running thread phenomenon. Similarly, in the wake of the Northern Iraq episode, the themes of ‘humanitarian access’, ‘institutionalised security for dispense of relief supplies’, and carving-up of ‘dedicated humanitarian corridors’ became instructive, particularly during the quagmire travails in Somalia.

The concept of ‘Safe Havens’, with its genesis again during the establishment of Operation Provide Comfort, became a hot-button issue during the UN and NATO operations at restoring peace in the war-ravaged Former Yugoslavia, most notably in the enclaves of Srebrenica, and others in RepublikSerbska. Lastly, even the then deeply controversial mechanism of the No-Fly Zone (NFZ), found resuscitation during the UN-NATO intervention in Gaddafi’s Libya in 2011, drawing on precedent from Northern Iraq, a full two decades earlier.¹⁵⁷

Those who claim that new permissive norms of humanitarian intervention emerged, in the 1990s, typically identify UNSCR 688, and the ensuing Western military deployment to protect the Kurds, as seminal lodestar precedents. This was the first time, apart from previous initiatives on South Africa that, the Security Council formally condemned domestic human rights violations, and declared that, the resulting instability, constituted a threat to international peace and security. Nick Wheeler, for instance, suggests that, even though UNSCR 688 did not explicitly authorize military intervention, it provided powerful “legitimizing arguments” that, led other states, and especially members of the UN Security Council, to acquiesce in Western military action. In the case of Northern Iraq, no member of the Council wanted to be seen, as opposing a military action that was clearly saving lives. As a result, even those governments, who were most uncomfortable with the West’s use of force against Iraq, were co-opted by being ‘shamed-into-silence’, so-to-speak.¹⁵⁸

Others have gone even further, suggesting that, widespread international acquiescence to Western intervention in Northern Iraq, gave great impetus to the emergence of new norms, permitting unilateral humanitarian intervention, albeit in exceptional cases, when the Security

¹⁵⁷Adam Roberts, *Humanitarian Action in War*, (Oxford: Oxford University Press, 1996), p. 16.

¹⁵⁸Lawrence Freedman and D. Boren, ‘Safe Havens for Kurds’, in N. Rodley (ed.) *To Loose the Bands of Wickedness: International Intervention in Defence of Human Rights*, (London: Brassey’s, 1992), p. 82.

Council has previously determined, the existence of a threat to peace and security. Even the more conservative and discreet of proponent commentators, in drawing conclusions, nevertheless recognised that, Western efforts to enforce protected areas for the Kurds, constituted a capping-milestone in the construction of new permissive norms of humanitarian intervention.¹⁵⁹ As the 1990s progressed the norm was developed into a securely established legitimate standard of behaviour, encompassing broader situations. Indeed in Somalia, armed intervention was explicitly authorised under Chapter VII, highlighting the robustness of the norm and its increasing legitimacy, in relation to norms of sovereignty, and by the end of the decade most states were prepared to accept that, the UNSC was entitled to authorize armed humanitarian intervention.¹⁶⁰

ARMED INTERVENTION IN HAITI – OPERATION ‘UPHOLD DEMOCRACY’

The tiny erstwhile French colony of Haiti, part of the loose skein of sovereigns, punctuating the Caribbean geographical subset within the Western Hemisphere, is the oldest of independent sovereign units within the region, yet arguably also, its most socio-economically impoverished. After enduring centuries of the continuum of autocratic-praetorian period of authoritarianism, Haiti’s embarked on its maiden constitutionally democratic peregrination, through the consummation of the free and fair election of its President, the former Catholic priest turned politico, Jean Bertrand Aristide. However, the fleeting flicker of a democratic tide was returned to its perfunctory norm, as President Aristide was summarily deposed on the intervening night of 29th-30th September 1991, principally by the military junta, allegedly acting at the collusive behest of the nation’s elites, comprising influential sections of business and society, whose turfs felt imperilled by the multitude of reforms promised by the incoming President.

Amidst the coup that unfolded and the installation of an alternative leader, largely propped up by the military regime, violent protest broke out in the streets of Port-au-Prince and the interiors, which met with a firm handed brutal crackdown response from the security forces. The upshot of this, left about one and half thousand people killed and the virtual hollowing-out, of the as-it-is fragile and skeletal economy, leaving scores of civilians with the proverbial Hobson’s choice, of fleeing existential persecution and economic perdition. In

¹⁵⁹Steven Blockmans, ‘Moving Into UN Chartered Waters: An Emerging Right of Unilateral Humanitarian Intervention’, *Leiden Journal of International Law*, vol. 12, 1999, p. 778.

¹⁶⁰Alex Bellamy and Nicholas Wheeler, ‘Humanitarian Intervention in World Politics’, in J. Baylis, S. Smith & J. Owens (eds.) *The Globalization of World Politics*, (Oxford: Oxford University Press, 2011), p. 516.

pinning hope of better pastures in the US, scores of dingy rickety boats teeming with people, began to make their way to the Sunshine State of Florida. It was lost on none that, the dossier of Haiti in subsequent years, manifested arguably the most unique of instances of conflict resolution and peace-building, in the nascent years since the end of the Cold War, portending the complex cross-cutting challenge of addressing the emasculation of democracy, the abject perpetration of state driven human rights repression, and the metastasizing spectre of a humanitarian crisis, both within (privations of the local populace) and without (poignancy of the migrating refugees). The ensuing intervention, commissioned upon concurrence of the international community and manifested *vide* authoritative approbation by the United Nations, only to be spearheaded by the United States and complemented by France, served to reinstall the deposed President Aristide, forestall the virulence against a defenceless people and to usher in a democratic way of life, that was pervasively aspired by the legion of Haitians, comports across a region, which despite its long decades of democracy-deficit, was incrementally inching its way, to being lifted by a discernible region-wide democratic tide.¹⁶¹

Upon power having been usurped, deposed President Aristide immediately petitioned the transcontinental entity of the Organisation of American States (OAS), for cogent and robust regional support, urging the instrumentalisation of coercive measures, to restore his legitimate regime, back to power, in consonance with the OAS's seminal Declaration of 5th June 1991, popularly known as the 'Santiago Commitment to Democracy and Development and the Renewal of the Inter-American System', which proclaimed the pertinacious resolve to defend democratic regimes across the Americas, from internal and external subversions of authority and unconstitutional usurpations of power. This was tectonic change, from the prevailing interpretation of Article 15 in the OAS Charter, which expressly forbade any forcible intervention, into the ostensible internal affairs of Member-States. It must be said though that, notwithstanding the newfound collectivised commitment, the tiny Caribbean island was perceived to present, the least resistance to multilateral action, in pursuance of implementation the new 'OAS' doctrine.

The subsequent couple of years, witnessed the international community, exert myriad forms of stifling-squeeze on the military dispensation in Haiti, subjecting the politico-executive and security echelons, to the cranked-up coercive pressure of economic sanctions,

¹⁶¹Tudson Jeffries, 'The United States and Haiti: An Exercise in Intervention', *Caribbean Quarterly*, vol. 47, no. 4, December 2001, p. 71.

albeit with chequered success, in that, it did not necessarily wilt the generals' resolve to cling on to power, but sure exacerbated the humanitarian crisis of ordinary civilians, in a country whose economy was long on the precipice of collapse. Ultimately, the UN Security Council did unanimously adopt Resolution 940 on 31st July 1994, authorizing the United States to "use all necessary means" to winch-out the military leadership, illegally ensconced in Port-au-Prince.¹⁶² The unprecedented Security Council approval broke new ground, in that, it was authorizing a Resolution under the aegis and auspices of Chapter VII, that provides for requisite enforcement action, in repudiation of breach or threats to breach of peace and security, none of which was transpiring here, in the manner conventionally understood to be the case. The Security Council in endorsing robust military action to dislodge the military installed government in Haiti and to dispossess them from power, declared the situation in the Caribbean country, to constitute a "threat to peace and security", under a broadened ambit comprehension of the objects leading to such an inherently subjective determination, one that neither produced an outright war nor internecine civil war hostilities within the state, nor for that matter, a 'supreme humanitarian emergency', widely associated with monstrosities in indiscriminate killings or the loss of innocent life on a humungous scale. However, UNSCR 1940 was equally seminal, in that, it created a condition-precedence of sorts, whereby the UN regards the unconstitutional overthrow of a democratically elected dispensation fuelling chaos and socio-economic hardship with spill-over effects for and in the wider region, to be causation enough, for it to act in pursuance of a 'threat to peace and security' under Chapter VII authority, in ordering a multinational punitive response, to reset the rightful authority within the sovereign-state.

The fact remains that, countries buffeted with the wherewithal to redress such unsavoury situations, seldom commit troops in harm's way or dip into their treasure-trove to fork-up public exchequer moneys, without good reason, honourable and/or enlightened. Hence, it behoves to ask, as to what impelled the US and the UN, to pitch their tent out, on a four year long \$3 billion dollar mission, if not for strong factors motivating them to do so, beyond the obvious? Although constructivist theorizing, speaks to this intervention as a seminal sign-post, reflective of a progressive consolidation of a system-wide permissive norm of humanitarian intervention, it can be countered, by the dint of a good measure of humanitarian crises, transpiring on either side of the Haitian experience, that did not meet with UN earnestness and proactivity, which would suggest that, this episode, was in the

¹⁶²See UNSCR 940, Security Council Document S/PV.3413, 31st July, 1994.

nature of an aberration, which neither reinforced the liberal-internationalist tenet, nor established a new global legal norm, nor entrenched an ethical society proposition, per se.

Notwithstanding the dichotomy aforesaid, it's important to look into the role of proverbial 'norm-entrepreneurs', and their respective impulses, out here, particularly since the Haitian situation rolled-over twin US Presidencies of George H.W. Bush and Bill Clinton, and flipped over from UN Secretary General Javier Perez de Cuellar to Dr. Boutros Boutros-Ghali. President Aristide was scuppered aside less than eight months into office, which came simply eight weeks out from President George H.W. Bush's own bid for re-election. Even though Bush may have been initially reluctant to get his hands dirty, so-to-speak, so close to an election, he quickly recognized that, he was served a potential *fait accompli*, ostensibly because, he had himself made the November 1991 hustling, a putative referendum on his foreign policy handling, more specifically Iraq. Furthermore, albatross like pressure was brought to bear, by the Democratic challenger Bill Clinton, who railed against him for being profoundly insensitive in the latter's obliviousness to the long festering humanitarian situation in Haiti, now accentuated by the dystopian political crisis, and promised his own compassionate and skittish policy stance, if he was voted to helm-ship. Besides, apparent inaction by President Bush would also have gone against the grain of his self-pronounced commitment to hemispheric democracy-and-free-trade-promotion, under the strategic rubric of the 1990s 'Initiative for the Americas'. Despite the fact that Aristide was no perfect Samaritan and an anti-imperialist at that, Washington felt that, casting its lot alongside him was fair game, to sustain its normative credence, and yet accomplish it on the cheap, since intervention in a fragile country, was a quintessentially low hanging fruit for the taking.

The United Nations, too, for its part had compulsions of its own to ensure that the Haitian scenario was suitably addressed, given that the failure in doing so would cast a pall on its peace-making and peace-keeping operations, that had met with newfound enthusiasm in the embryonic post-cold war years, not to mention the possible queering of the pitch in its peace-building essays, in terminating the civil wars in Central American Nicaragua and El Salvador. With the OAS reposing its faith in the UN Security Council to do the needful, it marked a moment of reckoning for the UN, not to fall prey once again, to the diplomatic contretemps, that marred the incidence of instrumentality of Chapter VII enforcement mechanism, during the Cold War. The UN had staked enormous resources and prestige in the 1990-1991 Haitian Presidential elections, which were a sequel to the disastrous bloodied elections of November 1987, ultimately annulled by General Henri Namphéy. With a

surprisingly halcyon rerun in December 1990, the premier global body was in no mood to fritter away the glimmer of hope for Haitian democracy, albeit tenuous, to procreate and be nurtured and nursed, even after the recant of peace-keeping monitors in February next year.

Within the larger humanitarian setting gripping Haiti and its political and socio-economic dysfunction, was the specific issue of the refugees, streaming their way to the northern neighbour, the US. It must be said that, the US has been inured to receiving and rehabilitating refugees from the Caribbean for decades, most notably those, from Castro ruled Cuba, and Washington has often allowed politics to condition and smear this occurrence. In contrast, Haiti was no communist country, enduring helmed by an anti-American ideologue or autocrat, and Haitians had been arriving in the US, both legally (up to 1.2 million of them by the time) and under cover (about one-half of those entering legally), all through the Reagan administration of the 1980s, with strict measures at interdiction and repatriation having also been mounted by the US Coast Guard to stave off them, in the past. Hence, this latest contingent of Haitians arriving, much fewer in number than earlier, ostensibly fleeing corporeal persecution and economic privation, is a scenario that shouldn't necessarily have perturbed the US, but it did, to begin with. In the initial period, US Coast Guard were under firm instructions to thwart arrivals ashore, in apparent violation of customary international law, which would make Haitians in the current situation, entitled for due process with regard to beseeching entreaties for asylum on grounds of persecution, even though some using this spectre as fig-leaf to emigrate, could not be ruled out. However, with much of the US media, particular the international print and electronic outlets amplifying coverage of this issue from its genesis in 1991 all the way through to the multinational intervention of 1994, perceived to bring satisfactory closure, did act as an exogenous pressure-point, not only during the impending electoral cycle of 1991, but even through the Clinton Presidency and its handling of the festering crisis. It's quite clear that sustained US diplomatic and military pressure was brought to bear upon the Haitian leadership and all relevant stakeholders by Washington in an apparent bid to fend off the humanitarian crisis burgeoning on US soil, which points to the humanitarian impulse of the mission, not to mention it being a crucible of Washington's credibility and resolve to quell other geographical theatres.

Critics and naysayers have pointed, to what they reckon, was international support for the authorization and execution of the intervention, possibly having little to do with humanitarian concerns, asserting that, the tenor of decision-making within and without and the demeanour and disposition of sovereign states over the issue, was induced and driven by

material and domestic-political concerns. It has often been adduced that, through the ebb and flow of discussions and debates at the UN, none of the permanent members in particular, ever predicated their assessments and attendant decisions to authorize the use of force, upon ‘humanitarian’ concerns per se. If President Bush was the seasoned statesman in the White House, he was also the consummate political operative, with decades of political experience behind him, spanning staff positions within the Executive and stints in Congress, not to mention his stewarding of the CIA. The cherubic looking but international politics callow Bill Clinton who succeeded him at 1600 Pennsylvania Avenue, in contrast, was steeped in gubernatorial politics of the Bible-Belt Deep-South, which made him a greenhorn to the nuances and intricacies of international relations. However, if cynical domestic considerations were to predominate, then, the US would not have sustained its involvement as long as it did (a full thirty six months), in foraging for an amicable diplomatic resolution to the Haitian crisis, alongside the UN, all the way through to the Governors’ Island Agreement of January 1993, albeit, whose terms of implementation were subsequently frustrated. The fact that the US commandeered military action in September 1994, amidst the debacle in Somalia, the vagaries and vicissitudes in the balkanising Former Yugoslavia, is read as the desperate stall of a US President in search for a foreign policy victory to brandish. While it may be unreasonable to wholly discount the suggestion that such political calculations of brownie points do militate, it ought to be borne in mind that, the US spearheaded the mission sanctioned by the collective of the UN Security Council and wasn’t a case of the then sole superpower in a unipolar world going off unilaterally to prosecute this on its own trip, like was the case with Iraq in 2002-03. As then National Security Advisor Anthony Lake averred, the operation was in the salutary nature of a stern deterrent to any and similar curmudgeons in the region and beyond, seeking to overturn constitutionalism within sovereign countries, and should be discerned as standing up for convergent values of democracy, human rights, and economic rectitude, even if some observed it for what became the archetypal and generic storyline of the use of force beholden to bolster the administration’s political standing rather than to help the helpless and in doing so the effete places of all, Haiti, had been chosen to posture a tough stand.¹⁶³

It has further been surmised that, the intervention in Haiti, falls short of symbolising or entrenching an emergent norm of humanitarian intervention, on account of the fact that, there isn’t much to write home about, in terms of either the norm’s internalization or regulation of

¹⁶³Michael Mandelbaum, ‘Foreign Policy as Social Work’, *Foreign Affairs*, vol. 71, no. 1, 1996, p. 20.

sovereign actors temper towards the matter, with insinuations bandied about that, many a sovereign decision-making on this score, point to material interests weighing heavy, and/or vested-interests quid pro quos being incandescent, in the cloistered corridors of the UN. Such a trajectory of thought is burnished by allegations that, Russian assurances not to trammel the passage of the UNSC Resolution on Haiti were elicited through US concessions to Moscow over the impending Russian-led peacekeeping operations, destined, for the former Soviet Eurasian states of Georgia and Tajikistan.¹⁶⁴ The fact that UNSCR 937, pertaining specifically to Georgia, came up for deliberation and adoption, ten days prior to the UNSC Resolution 940 on Haiti, is peddled as adding grist-to-the-mill of accusations of a backchannel deal having been struck, to ward off the Russian as also the Chinese veto, the latter brought on board, vide temporary reprieve by Washington, through a requisite climb-down on imminent US arms sales to Taiwan, mandated under the Taiwan Security Enhancement Act of the US Congress.

While none of the foregoing can be dismissed, as kite-flying figments of imagination, there is no ironclad evidentiary value to such qualms and misgivings, beyond the suggestion that, such accommodating negotiations are part of the terrain at the UN, which is an association of sovereigns and whose Security Council represents the intersection point for fifteen distinct foreign policies, imbued with their respective sets of national interests, that makes negotiations and back and forth posturing, perfunctory. When UN Security Resolutions are adopted, it remains a grimacing fact that, more often than not, they embrace the lowest common denominator of sovereign-concurrence, and the prolonged and painstaking process by which such an elusive threshold of adequate traction is reached, remains invariably formidable and fraught; hence, such grand-bargains, if resorted to and constructively arrived at through sovereign interchange, are hardly something that ought to be derided or cast aspersions at, unless, where they yield to miscarriage of duty or manifest a vitiating act of omission or commission.¹⁶⁵ The conjectured fact of Russian objection to phraseology and formulation in the original draft Resolution, having led to its temperance in articulation, is by no means objectionable or exceptionally untoward in the UN's workings, and unless the content of the Resolution and its watering-down has undermined the cause of the mission, as the tepidly mandated Resolution deploying UN peacekeepers to Bosnia Herzegovina, left them anaemically watching over GeneralRatkoMladic presided cold-blooded slaughter of

¹⁶⁴David Malone, *Decision-Making in the UN Security Council: The Case of Haiti, 1990-1997*. (Oxford: Clarendon Press, 1998), p. 108.

¹⁶⁵Erik Voeten, 'Outside Options and the Logic of Security Council Action', *American Political Science Review*, vol. 95, no. 4, 2001, p. 846.

eight thousand men and boys in Srebrenica in the Summer of 1995, there should be no reason for quibble. Empirical and anecdotal knowledge has it that, sanctioned enforcement action had US jets scrambling to blitz the military junta from the air, with the much vaunted ‘back-breaking of resolve’ effect, in obtaining the military establishment to swiftly relinquish usurped power.

By no stretch of imagination, could the tiny, resource-devoid and non-cold war cynosure of attention Haiti, have ever constituted a geographical or geopolitical sphere of significant or existential national interest, to the US, other Western Hemispheric peers, or erstwhile colonial powers alike, as say a Castro’s Cuba did, on account of ideological polarity, or Noriega’s Panama was, due to its geostrategic location, or for that matter, certain Central American countries were, at the security threat altar of anti-imperialist guerrillas and revolutionary insurgent groups. Hence, the compulsiveness of intervention can hardly be satisfactorily explicated, through the realist prism of the rational-choice theoretical construct, that privileges survival-security and self-interests based considerations, to the exclusion of all else. If anything, Haiti became the cynosure of attention, during its current military putsch on democracy and attempt at eviscerating citizens’ human rights. The welter of Latin American states, notwithstanding the hues of ideological persuasions that presided over their dispensations were in unison on defending the common collective resolve to usher in and sustain democratic resilience across the region and to repudiate any attempts at sullyng the tide. Hence, the June 1991 ‘Resolution 1080’ of the Organization of American States (OAS), christened as the Santiago Commitment to Democracy and Development and the Renewal of the Inter-American System, required the OAS’s Secretary General to convene the Permanent Council meeting, within ten days of a Coup, in any member country.

At the Ad Hoc meeting of the regional body on 2nd October 1991, U.S. Secretary of State James Baker, an avowed realist, ironically disabused himself in the company of ousted President Aristide, in stating that, “Last June, the General Assembly took the historic step of guaranteeing that this body would convene to respond to any sudden or irregular interruption of the democratic order in any Member State...It is imperative...that we agree...to act collectively to defend the legitimate government of President Aristide....We will not recognize this outlaw regime”. The following day, the OAS adopted a Resolution, categorically rejecting the coup, but calling for the ‘diplomatic sequestration’, of the illegitimate Haitian regime, and recognizing only Haitian representatives as designated by Aristide, to be legitimate representatives. Furthermore, in purveying the Resolution (OAS

Resolution 1/91) to the UN, it noted that “the American States reject the disruption of constitutional order”. This was by no means a signifier that the OAS did not wish to proceed beyond diplomatic prodding of the Haitian military regime to cede power to the democratic elected leader, but was indicative of the fact that the OAS recognized the need for progressive steps up the escalatory ladder approach, besides being sentient of the fact that not only did it lack robust enforcement mechanism to deal with the transgression punitively, but that any such initiation would fall prey to disputatious wrangling, possibly along ideological shades, given the long history of the regional organization and its travails with breaking out of the US’s vice-like stranglehold over it. Also, its non-formal recognition of the humanitarian situation does not reflect the absence of a norm of humanitarian intervention since the throttling of democracy was seen as fundamental to the regression that was transpiring, and the humanitarian situation had yet not played itself out in full public glare, which, when it did, was a matter in the preserve and province of the UN. However, the subsequent acceptance of the UN Resolution on Haiti in July of 1994, which had prominent Latin American countries on the Council, who did not stake themselves out in opposition though expressed reservations over the impending course of action, is strong evidence enough that the preservation of democratic fervour was seen as enmeshed and intertwined with human dignity and humanitarianism.

More fundamentally, it has also been contended that, the intervention in Haiti does not constitute a humanitarian intervention per se, since the multinational ingress did not take place against sovereign consent, which is understood as condition sine qua non for such an intervention to be considered as ‘humanitarian’. The fact that President Aristide had expressly approved of such international intervention into his country was sought to be regarded as sovereign-consent, a dimension sought to be spotlighted, by the Venezuelan delegation at the UN Security Council, which said that, “it is not a question of interference in Haiti’s internal affairs. The legitimate and constitutional government in Haiti, the Government of Jean-Bertrand Aristide, has asked us to act today in the Security Council”.¹⁶⁶

Firstly, there is no classically or formally delineated definition of a ‘humanitarian intervention’, as it’s not explicitly worded or categorically provided for within the UN Charter or in any treaty else. The Charter document simply provides for military interventions, to be undertaken multilaterally under the rubric of ‘Collective Security’, in conditions of actual

¹⁶⁶See UN Document, S/PV.3238, 16th June 1993.

aggression or breach or an active threat to breach of peace in pursuance of upholding international peace and security, not to mention a sovereign-state's inherent and inalienable right to self-defence. In much the same way as 'Peacekeeping' as a technique and instrument, though not provided for within the Charter, nevertheless found operational traction, owing to normative acceptance of the practicality of its application, in addressing lesser controversial and relatively regulated situations of peace, security and conflict, that could not or did not meet the threshold for Chapter VII militarized enforcement action, similarly, humanitarian intervention must be seen as the normative and operative development, across discourse and politics within the UN System, of an initiative, in pursuance of upholding the other primary ideal and purpose of the global body, which is establishment and maintenance of human rights and fundamental freedoms.

The recognition of President Aristide and his government, as the 'legitimate' government, in the eyes of the international community, was to alleviate any sense of moral equivalence, between his dispensation, borne of free and fair elections, and the illicitly propped up government, that functioned as a cat's paw stooge of the military. At no point of time, was the international sovereignty of Haiti, as a formal State and politically independent member within the international community, in juridical terms, under cloud or threat as a result of internal political subversion, which had brought about a coerced change in government under circumstances of high handedness and duress, not impinging upon the sovereign character of the state. This said, despite the military regime having been illegally installed, it was visibly ensconced in the capital Port-au-Prince, and exercising its incontrovertible authoritative writ and monopoly over organised violence, across the length and breadth of the albeit small island nation, thereby vesting it with de facto existence, though bereft of de jure acclaim. Hence, in so far as the military intervention led by the US and complemented by France and others, sought to unseat the illegal regime forcibly in control of the country, it was an intervention sans the sovereign-consent of Haiti's 'effective' government, endeavouring to restore authoritative power to a 'legal' government to exercise 'legitimate' writ over the nation. The OAS and the UN repeatedly denounced the de facto military government led by General Raoul Cedras, as "illegal", and recognized the Aristide regime, as the legitimate government of Haiti, which reinforces the nuanced but clarifying distinction, proffered aforesaid. The fact that the Security Council sought a formal request from deposed President Aristide prior to commending its imprimatur to the armed mission, was more in the nature of keeping the records straight and to assuage the feelings of the

pathological skeptics within the international community, who compulsively smell a rat, in any and every remedial action, undertaken by a Western power.

It has further been argued that, humanitarian considerations were conspicuous by their almost total omission from the text of UNSC Resolution 940, which endorsed enforcement action of coercive hue. Instead, the Resolution justifies the use of force by noting that, “the situation in Haiti continues to constitute a threat to peace and security in the region” and that “the goal of the international community (in authorizing the use of force) remains the restoration of democracy in Haiti, and the prompt return of the legitimately elected government.” Furthermore, the point is reinforced by recourse to what a number of delegations made clear, in debates on prior resolutions in the Security Council that, the United Nations was responsible for upholding election results that, it had declared free and fair. Thus, the primary purposes of the intervention were, to address a security threat and restore democracy, under an expanded definition of what constitutes a threat to international peace and security, and not simply in a narrow sense, to alleviate human suffering.

This is most counter-intuitive, since it’s eminently clear that, any Chapter VII resolution would have to be issued to address peace and security orgies itself. What’s moot here is that the UN was militating from the standpoint of an ‘expanded definition of what constitutes a threat to international peace and security’ and its only logical that such a determination cannot be arrived at simply by the forced change of government within a state, but by taking into consideration the holistic situation emanating out of what is the primary trigger. The process at adoption of this Resolution, must be perceived in the wider setting, wherein norm-entrepreneurs such as UNSGs Perez de Cuellar and Dr. Boutros-Ghali had repeatedly voiced the need for human rights to be front-and-center in conflict resolution and peace-building; President Bush had more than once, spoken of a ‘New World Order’, based on democracy, human rights and economic liberalism, a theme subsequently taken up by President Clinton too; the involvement of the UN in ameliorating the situation in Northern Iraq (1991-92) and in Somalia (1991-1995), etc. If not for the festering human rights situation that made it to the front pages and ticker screens of news-outlets, and the repeated pronouncement of norm-entrepreneurs, the outrage that something decisive needed to be done may not have militaristically fructified, and the mind-space of the global community could not have been occupied for as long as the crisis did, when equally pressing instances of hotspots around the globe were vying for requisite attention and suitable action.

This said, it is acceptable that the Haitian situation was not robust enough to be norm-creating in itself, nor could that be anyone's logical proposition, too. Throughout the Haitian crisis, many countries went out of their way to highlight their presumably zealous commitment to the principle of sovereignty. The likes of Spain, India, Brazil, and China, all stressed that, their lack of opposition to punitive action against the de facto government was only made possible, by the condition that, the intervention "did not set a precedent" for future international behaviour. For example, in explaining its decision to vote for resolution 940, the Spanish delegation stated that, "Spain, which attaches great importance to the principle of non-intervention, especially on the American continent, supported resolution 940 because of the singular and exceptional circumstances of this case, because of the clear position taken by the legitimate authorities of Haiti and because the action to be initiated will not be carried out unilaterally but, rather, within a multilateral and institutional framework, under the authority and control the United Nations. Had it been otherwise, we should not have been able to support such an action".¹⁶⁷ Finally, it should be noted that several countries in the region were opposed to Resolution 940. For example, Mexico, Cuba, Nicaragua, and Uruguay, though not on the Security Council at the time, spoke out against Resolution 940, making clear that, there were no circumstances under which they would support a Chapter VII intervention, in the case of Haiti. Brazil, a non-permanent member of the Security Council, reaffirmed that it "strictly observe(s) the principles of the peaceful settlement of disputes and non-intervention." Though supportive of democracy in Haiti, the Brazilian delegation initially refused to support resolution 940 because "there is no consensus among them (Latin American States) as to the action proposed today" and because military intervention in Haiti constituted "a worrisome departure from the principles and customary practices adopted by the United Nations".¹⁶⁸

All said and done, when the time came to pin their convictions to the mast, UNSCR 940, passed muster by twelve votes in favour to none opposed, with twin abstentions in the form of China and Brazil (Rwanda recused itself from the proceedings altogether), which should leave little doubt about the procedural and substantive legitimacy for action, as enjoined under the UN Charter, though chatter of suspicions and reservations would always persist. The former's (Chinese) abstention is most understandable, as Beijing is known to abidingly hedge its bets and posture strong in extracting concessions before opting to be non-committal on all issues outside of its core interests at the time, viz., Taiwan, Tibet, and North Korea. Brazil's acerbic condemnation was mollicoddled to an extent, by the visit of US

¹⁶⁷See UNSCR 940, UN document P/SV.3413, 31st July 1994.

¹⁶⁸Ibid.

Under-Secretary of State Peter Tarnoff to Brasília, a week prior to the ultimate vote, after which Itamaraty chose equanimity, on its predilections.

On the night of 17th September, 1994, President Emil Jonassaint agreed to surrender, in return for amnesty to those supporting the coup regime, in consonance with the terms of what had been mutually agreed upon, under the 1993 Governors' Island Agreement. This even as the Jimmy Carter-Sam Nunn-Colin Powell mediated negotiations with Haitian Generals, Raoul Cédras and Philippe Biamby, to get them to relinquish control, had apparently failed, and US Republican legislators, who had earlier threatened to stop the US invasion, had gone silent, at the last minute.¹⁶⁹ The coup leaders were subsequently forced to leave Haiti, under the enveloping threat of US naval assets build-up, and President Aristide was returned to power in mid-October of 1994. Subsequently, a mandated United Nations peacekeeping force, assumed the reigns from the U.S., on 31st of March, 1995.

The normative genealogy however, still leaves entirely unexplained, why new humanitarian norms, which claims that mutated Western attitudes toward the rest of the world, led them to identify with non-Western populations, during the twentieth century. This, in the routine course of events, should have led to the global diffusion and acceptance of new permissive norms of humanitarian military intervention, in the 1990s. Yet, there appears to be little doubt, about the systemic nature of these new humanitarian intervention norms, in so far as they are systemic-level variables, in both origin and effects, that are held by a majority of states in the system, and which affects those states' behaviour, in observable ways.¹⁷⁰ These norms, create permissive conditions for action, but do not determine action; i.e., they reduce domestic and international opposition to humanitarian military interventions by the more powerful states. To the contrary, such genealogical exercises are reckoned to be specious and simply infer the existence of a new international consensus around norms of humanitarian intervention from the attitudes of major states toward successive, ostensibly humanitarian military interventions, since the end of the Cold War. It emphasizes the role of precedent-setting actions by powerful states, such that, if powerful states justify their conspicuous and potentially illegitimate acts, through an original interpretation of existing rules, and other states accept the interpretation, this may give rise to new conventions and new international

¹⁶⁹Henry Carey, 'The UN Humanitarian Intervention in Haiti and the Development of a Human Rights Enforcement', *Journal of Haitian Studies*, vol. 3, no. 4, 1998, p. 30.

¹⁷⁰Martha Finnemore, 'Constructing Norms of Humanitarian Intervention', in Peter J. Katzenstein, ed., *The Culture of National Security: Norms and Identity in World Politics*, (New York, NY: Columbia University Press, 1996), p. 159.

norms.¹⁷¹ In the 1990s, Western states were, through their actions, advancing a new claim, i.e. the use of force could be justified, to enforce compliance with an existing Security Council resolution, which demanded respect for human rights, even without explicit multilateral authorization through the UN, such as in the instances of Northern Iraq and Kosovo. The willingness of most other states, to accept or condone such interventions, led to the progressive system-wide acceptance and consolidation, of a new permissive norm of humanitarian intervention.¹⁷² To that extent, each interventionism act is so conspicuous, that, it serves as an explicit stimulus to subsequent events of a comparable nature, and meanwhile, the norm that affirms such an intervention in domestic affairs, is reinforced.

The bottom-line argument is that we have today reached a global consensus condoning intervention practices, underpinned by humanitarian concerns and the belief that intervention is a just and necessary means of controlling chaos in a globalized, interconnected system.¹⁷³ That does not necessarily mean that, a majority of states have fully internalized the new norms of humanitarian intervention, and that they are willing to incur significant costs, to defend them. If anything, it just means, that, at a minimum, most states today tacitly accept these norms and related interventionist policies. Several non-Western states may be highly sceptical of humanitarian military intervention in principle, and a few of them, may even openly say so. But according to constructivist scholars, they typically refrain from overtly opposing specific military interventions, which are clearly humanitarian in purpose, due to the inherent “shaming power of humanitarian norms”.¹⁷⁴ In other words, because of the global legitimacy enjoyed by general humanitarian norms, i.e., norms about human rights and cosmopolitan solidarity, any state that wishes to be seen as a member in good standing of modern international society, needs to at least implicitly accept, a related set of norms about humanitarian military intervention.

Throughout the 1990s, Non-Western governments, that were uncomfortable with what they viewed as the West’s erosion of the non-intervention principle, calculated that, they

¹⁷¹Nicholas Wheeler, ‘The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society’, in Jennifer M. Welsh, ed., *Humanitarian Intervention and International Relations*, (Oxford, UK: Oxford University Press, 2004), p. 34.

¹⁷²James N. Rosenau, ‘Sovereignty in a Turbulent World’, in Gene M. Lyons and Michael Mastanduno, (eds.), *Beyond Westphalia: State Sovereignty and International Intervention*, (Baltimore, MD: Johns Hopkins University Press, 1995), pp. 215-16.

¹⁷³Charles W. Kegley, Gregory Raymond, and Margaret G. Hermann, ‘The Rise and Fall of the Non-Intervention Norm: Some Correlates and Potential Consequences’, *Fletcher Forum of World Affairs*, vol.22, 1998, pp. 84, 89.

¹⁷⁴Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, (Oxford, UK: Oxford University Press, 2000), p. 290.

would suffer political costs, if they challenged Western intervention, and so they tended to acquiesce, in it. The underlying assumption is that, opposition to specific initiatives in support of global human rights norms, including humanitarian military interventions, leads to widespread social opprobrium. Thus, only a few isolated ‘pariah states’, with little to squander, have been more willing to explicitly oppose specific humanitarian interventions, whether at the UN Security Council or elsewhere.

CHAPTER IV

SOVEREIGN INTERESTS CALCULUS AND THE PRAXIS OF HUMANITARIAN INTERVENTIONS

The previous Chapter dealt in dilatory manner, with the theoretical and conceptual mechanics of the Norm Life-Cycle, as also the dynamics of the evolutionary trajectory of norms, concerning the strategic use of force in pursuance of humanitarian empathy, but also in upholding the aspirational attribute of human rights, across the case studies of Northern Iraq (1990-91); Somalia (1991-1994); Haiti (1993-1994); and Kosovo (1998-1999), respectively. Following on from the detailed discussion about normativity within discourse and praxis, this succeeding Chapter accounts for the medley of sovereign interests, which are often at play, in determining the worthiness of commending oneself to humanitarian intervention, and more particularly, the factors shaping the US's involvement in humanitarian intervention missions as the preponderant actor in world affairs at the time. Three case studies are under examination here, i.e., the United States' interventions, in Somalia, Haiti, and Kosovo. Each of these interventions are studied, from an idiographic discourse and praxis standpoint, wherein the purposive, deliberative, instrumental reasoning and objective reasoning dimensions of every interventionist crisis is explored and showcased for what it's worth, in impacting the nature of Washington's ultimate appropriation towards such conflict zone challenges. These idiographic discourses, emanate from the twin trajectorial strands of contending discourses in humanitarian intervention, which condition a sovereign-state's military involvement within the external realm, viz., the 'Universalist/Internationalist' dimension, that emphasizes a cosmopolitan conception of world affairs and attendant approach anchored in solidarity across sovereign boundaries, and the 'Particularist/Nationalist' dimension, which prioritizes the intrinsic sovereign interests of the powerful state, conceived and articulated, from a realist/rationalist frame of strategic-behaviour conditioning.

CONTENDING DISCOURSES IN HUMANITARIAN INTERVENTION

THE UNIVERSALIST/INTERNATIONALIST PARADIGM

The Universalist discourse brings multiple elements which play a role in foreign policy, to the fore. Universalism is anchored in the ideation of solidarity with peers within the milieu of international society, such that, there is partake in elicited interests and empathetic exude, alike. Universalist discourse is a call to a moral sense of commitment and an ethicality

of responsibility, however, to what extent these intangible considerations impinge upon foreign policy structuring and process, is arguable. Universalism does breed a sense of exceptionalism, wherein a state perceives itself, as the normative values leader and the custodian and upholder of such tenets within the international system, which allows it to proceed to arrogate to itself duties and responsibilities, flowing from such a universalised conception of the exceptional, towards enforcing normativity and protecting the weaker states. In a modulated sense of being the exceptional, the state within a universalism discourse, views itself as a constituent of the international community, partaking in the values and interests identified with such a community, without assigning or arrogating to itself, any specially ordained rights and obligations. In such a conception of itself, participation is privileged over leadership, and passivity wins over proactivity, as the state is content to follow in someone's lead, rather than lead of its own accord and volition. In the third of perception frames, the state smitten in universalism identifies itself, as a 'laissez-faire' sovereign.¹⁷⁵ Such a state repudiates the external ingress into internal affairs of sovereign peers, covets self-determination over other forms of political autonomy and independence, and is steeped in notions of anti-colonialism and anti-imperialism. Each of these three approaches, constitutes a distinct strain of universalism, and hence behoves curated policy frameworks.

THE PARTICULARIST/NATIONALIST STATE

In stark contrast to the Universalist streak, stands the Particularist or Nationalist impulse in foreign policy discourse, situated in the conventional strategic conception of the 'national security' state. Moral particularism stresses the state's own responsibility for the wellbeing of itself and its citizenry. Again, the particularist streak embraces a triad of strains, with the most emphatic version being that of a dynamic state, determined at revisionism, in terms of altering the balance of power within the international system, to align with its strategic preferences. In comparison, a moderate form of particularism on the part of a state emphasizes status quo and its enduring preservation with a view to maintaining its position within an orderly global order.¹⁷⁶ However, should the security and stability of such a state merit mutation of the existing balance of power axis, then such a state would not balk but join

¹⁷⁵The use of the nomenclature of 'laissez faire' here, is not to be confused with economic connotation of the term. See Coicaud and Wheeler, *National Interest and International Solidarity: Particular and Universal Ethics in International Life* (New York:United Nations University Press, 2008), p. 136.

¹⁷⁶It should be noted that this conception of status quo, dynamic and isolationist states draws heavily on the work of Hans Morgenthau, who used a similar schema to chart variations in approaches to foreign policy. Following Morgenthau, this has become a commonly used schema. See Morgenthau, *Power Among Nations*.

forces in consummating such a course. In an extreme form, particularism may take the form of vested self-interest, wherein the state detaches itself from the dynamics within the international system, to the point where, the only point of engagement for it with systemic mechanics is to the extent of ensuring its survival. Such a reclusive state focuses inward on its domestic vistas in pursuance of self-interested wellbeing.

CONCEPTION OF INTERESTS – UNIVERSALIST/INTERNATIONALIST AXIS

When contextualized to humanitarian intervention, a Universalist discourse lays stress on globalized solidarity, in support of upholding human rights and fundamental freedoms across the world, without exception to geographical, political, demographic or cultural distinction. An attendant extrapolation of the Universalist discourse, regards support for democracy, as a key manifestation, espousing the superiority of westernized liberal democracy as being beneficent for society. Spin-off from such Universalist discourse can also be found in concerns over the credibility of international regimes on human rights, whose innate institutionalism, may be considered inadequate and misplaced, to deal with variegated forms of human rights abuses. Such concerns further extend to the ability of the international system to be buffeted with sufficient deterrent capability to ward-off potential devious entities, whose compliance or otherwise with international norms are directly proportional to the robustness of international regimes. A further dimension to Universalist discourse stems from overriding concern for establishment and maintenance of peace and security, which increasingly requires attending to the internal dimensions of such conflicts, with a view to preserving the sanctity of the global order. Finally, a moral and ethical sense of responsibility in Universalist frame pertains to the historical role of the major powers in geographical coordinates which in effect induces them to get involved with remedial actions in these zones of operation. Hence, colonial powers, former superpowers locked in bipolarity or simply regional allies may perceive of special relations with certain geographical areas of presence.

CONCEPTION OF INTERESTS – THE PARTICULARIST/NATIONALIST AXIS

The particularist or nationalist lens on state responsibility and interests derived from them, gives precedence to the core interests of the state, which by all realist accounts, conflates with national security. The primordial concern for any state is and has to be the welfare and wellbeing of its citizenry which can be optimally undertaken only in conditions where the state's sovereign and territorial unity is uncompromised and not vitiated in any manner or form. This said, a national security driven state conception of interests would only

naturally veer to ensuring that its strategic natural resources so sourced from foreign regions, be secured in terms of ensuring uninterrupted supply and greater reliability of pricing with regard to such vital resources, that underpin and fuel economic growth and development processes. Besides, a national security conditioned state, in conceiving of its interests, would logically desire to establish and maintain its strong foot-print, particularly in those regions which are tied to its territorial integrity but also its economic vitality and wellbeing, hence, treating Anti Access Area Denial (A2AD), in critical geographical vectors, as unconditionally imperative. Another element within the interests conception under a Universalist framework relates to the state's preferences of protagonists in conflicts across regions, with a view to creating conditions undergirded by propitious balance of power, which impels the state to support certain entities in feuds whether in next door places or in far flung regions, alike. Notwithstanding the foregoing, it may also be reasonable to find the national security motivated state to treat the attribute of democracy as integral to enhancing its national security, such that it proactively promotes progressive democratization of strategic foreign spaces as also generally, premised on the theoretical construct that democratic states are less likely to engage in violent conflict, as against non-democratic sovereigns.

Trilateralized Dilemmas

While considering dilemmas in the context of humanitarian intervention, three strands of dilemmas come into reckoning, viz., *consequences of chaos, the consequences of interventionism, and the consequences concerning sovereignty*. A prominent realm of consideration in the post-cold war era is the conception of chaos or anarchy afflicting nondescript states. The delimitation of ideologically constituted bipolarity, denuded superpower interest across many global coordinates, allowing an upsurge in ancient hatreds and virulent nationalisms, which though existent during the Cold War, were kept under the lid. Of course, it may be debated, as to the extent of impact that these chaotic or anarchic spectres exert upon nations across the world, in terms of the ethical dilemmas in consideration.¹⁷⁷ From the standpoint of Universalist discourse, concerns range from the destructive impacts of the conflicts on the afflicted state itself, besides concerns that emanate from the dangers posed by the spill-over of such malevolent tendencies across borders or even strewn across a wider regional landscape. However, such Universalist notions inviting involvement in conflicts aimed at remedying the situation, must be counteracted by

¹⁷⁷Indeed, Michael Ignatieff describes 'Chaos' as the 'meta-narrative' of the post-Cold War era. See Ignatieff, 'The Stories We Tell: Television and Humanitarian Aid', *The Social Contract*, vol. 10, no. 1, 1999, pp. 4-5.

considerations that, these conflicts may have crossed a certain threshold, which makes them less amenable if not outrightly intractable, and beyond the good offices of the intervening authorities in the extant. The dimension of chaos also poses concerns within the particularist discourse too, as considerations of anarchic regions, countries and geographical pockets could become vacuums for destabilization and undermining the strategic and economic interests of the state in dilemma over how to address this challenge. Again the motivation for intervention based on such concerns is also compensated by the understanding that most often little could be done to ameliorate the situation, thereby raising the dialectic of help vis-à-vis harm proposition.

A second dilemma, concerning humanitarian intervention, coalesces around considerations of intervention, invariably viewed as a double-edge sword, cutting both ways. In the sui generis world of international politics, no two interventions could ever be mirror images of each other, despite them sharing striking similarities, emulative more than replicative of each other. The Universalist case for intervention is built around the view that should such intervention not materialize, then it would in effect hasten the process of the target state, almost irreversibly hurtling down the abyss of destruction, and this in turn could portend a wider remit of concerns, going beyond the immediacy of the situation on hand. However, with interventions in far-away places often vulnerable to unsavoury surprises, one has to weigh the costs of action which could leave the intervening state confronting such dangers and subduing them vis-à-vis the benefits of inaction, which may leave the situation unattended but also render the state in dilemma of intervention, relatively insulated from the deleterious effects. Besides, dilemmas compound, as to the viability of expending valuable domestic resources upon an external situation, which may not necessarily be of existential concern, besides, the possibilities of vitiating relations with other sovereigns, through such contentious interventions.

A third ethical dilemma in the context of intervention, relates to sovereignty. It has been a widely held norm within the international community, since at least the Treaty of Westphalia that, intervention in the sovereign affairs of another nation, is not permissible. The veil of sovereignty, in the context of humanitarian intervention, is thus seen as a possible obstacle to outside intervention to resolve situations of conflict and anarchy. At the same time, sovereignty is seen as a key component of international stability, preventing as it does, unwarranted outside interference in a state's domestic affairs, and raising the costs of aggression. In terms of the universalist discourse, the ethical dilemma arises, as to whether

gross abuses of human rights provides a sufficient reason to violate a nation's sovereignty, or whether sovereignty is sacrosanct and a value to be protected, in and of itself. In terms of the particularist discourse, the focus is again on the damage that may accrue to the intervening nation from its violation of sovereignty. The nationalist state may be tempted to ignore the strictures of sovereignty, in order to secure its own interests within other states, but may nevertheless be concerned that, doing so may weaken the fabric of the sovereign international system such that violations of its own sovereignty may be considered actionable by others.

INTERVENTIONIST PRAXIS INTO A NEW WORLD – THE U.S. IN SOMALIA

Washington's insertion into the treacherous landscape of war-torn Somalia, in the heart of the Horn of Africa and its frequent upheavals, provides an irrepressibly intriguing case of big power appropriation to the degenerative dynamics within a relatively nondescript sovereign entity at the time. The quest for rationalizing such seemingly well-meaning and good intentioned involvement towards ameliorating a malevolent spectre has often sought to be justified on myriad grounds, since the objective realities of what transpired in terms of an external role at alleviating the morass within Somalia, does not chime with the realist strand of rationalist theorizing. Alternative explications of what may have motivated Washington range from the global superpower's desire to exert pressure on neighbouring Sudan and its dictator Omar Bashir in his feud with the Sudanese Peoples' Liberation Movement (SPLM) over the future status of Southern Sudan; to an evinced interest in torpedoing the possibility of any radical outfit seizing power in Mogadishu in the wake of strongman leader Siad Barre and his fleeing of the country; through to the inclination of the sole superpower within a now unipolar global moment to showcase the breadth of its military-industrial complex and militaristic muscle-flexing; all the way to this being nothing but a neo-imperialist machination to domineer over the proverbial third world.¹⁷⁸ Safe to say that, none of these averments met with meaningful traction per se.

Notwithstanding three scenarios were thought to be plausible and hence predominated, viz. that the US-led intervention in Somalia was a quintessentially media-induced and media-driven mission from the get-go, all the way through to its unsavoury denouement¹⁷⁹; that it was an integral part of President George Bush's gambit at political leavening of his electoral

¹⁷⁸Jeffrey Lefebvre, 'The US Military Intervention in Somalia: A Hidden Agenda?', *Middle East Policy*, vol. 2, no. 1, 1993, p.48.

¹⁷⁹George Kennan, 'Somalia: Through a Glass, Darkly', *New York Times*, 30 September, 1993.

prospects heading into impending re-election¹⁸⁰; that it was simply a salutary triumph for humanitarian impulse and ostensible human rights ideals over inveterately ensconced considerations of particularism. The contribution of the Fourth Estate, considerations about legacy that were ruminating the minds of the incumbent President, and a permeating humanitarian streak, all clutched at straws in their own respects, lacking theoretical construct basis and smitten with infirmities of empiricism, yet, are crucial in comprehending the ideational identity dimension to the exercise and process of engendering interests and framing of inter-agency debates in foreign policy formulation and praxis, with equities for the agent and his agency and implications for other stakeholders alike. President's Bush imprint on the US Presidency can be marked down for its identity heavy lineage, in terms of his articulation of the visage of a 'New World Order', which left an indelible mark on US foreign policy making as well as on US engagement with the wider world, most notably purveyance of actions through the United Nations. One dimension of this averred 'New World Order' related integrally to the American penchant for delineating humanitarian objectives, even as this instinct and impulse derived from, rather than operated in isolation of the replicating internationalist ideation of a new world order and discourse. The media, for its part, is known to play its hallowed role, in so far as it gives urgent vent to exigent situations and attendant policy concerns of instrumental hue, concerning global hotspots, Somalia no less, wherein here the media impacted the trajectory of twiddling policy options, by speaking to the need for the US to live up to its integrity, the reputational credence of which, emanated directly, from its self-avowed pronouncements and attendant policy action.

The Chapter is hived into three sequential components, each of which pertains to a distinct but succeeding phase, in the US's interventionist consideration of and approach on Somalia, and reflective of the epochal tenor of 'sequentialism' (chronology) and 'critical junctures' (inflexion-point pivot) in causal relationship. This facilitates a sound understanding of how the evolution of policy debate(s), may be impinged upon and chaperoned, by endogenous and exogenous jolts. Across each of the components, the questions of foreign policy role, the construction and determination of interests, the wrestle with ethical dilemmas, and the instrumental computations, within the policy discourse on Somalia and subsequently too with Haiti. The upshot of this is the deciphering of a convolute composite picture that manifests the identity impelled policy frame on Somalia, through dialectic contestation with competitive content, but also across various tiers of discourse, within a multi-layered process

¹⁸⁰Jon Western, 'Sources of Humanitarian Intervention: Beliefs, Information, and Advocacy in the US Decisions on Somalia and Bosnia', *International Security*, vol. 26, no.4, 2002, p.119.

of policy formulation. The on-setting epoch coincides with the six months from January to June 1992, when the response formulation to Somalia, was in its incipience and hence open to impugn. The subsequent period in time, viz., the twin months of July and August 1992, correlate with a marked transition in attitudinal conditioning towards the wretched situation and comporting shift in response mechanism, owing to a crescendo of international clamour for action, no less. The final section conforms to the back end of 1992 (September to December 1992), when contretemps and travails of the relief effort so mounted became apparent and a lightning-rod for harangue, by all and sundry, precipitating the Presidential authorization in favour of a massive intervention operation, culminating in the deployment of US forces, in December 1992.

US'S FOREIGN POLICY ROLE: NEW WORLD ORDER Vs 'PENTAGON' PAPER

Segueing into the Post-Cold War upon the unprecedented halcyon demise of the bipolar schema in world affairs, the United States found itself, with redoubtably greater quotient of national power, and consequently, at the apogee of strategic power projection, exalted in its stature at the head of a liberal democratic tradition that was perceived to have prevailed over the Communist Soviet Union, leading to a de-ideological post-cold war world order. However, such privileged position also enabled to breed reflection and introspection, having only lately emerged victorious from resoundingly repudiating untenable Iraqi aggression out of Kuwait, as also had succeeded, in precluding Saddam Hussein and his Baath Army from pillaging the Shiites, and committing depredations against the Kurdish minority, in the north of the country. Two clear visions went head to head in terms of decoding the prospective role for America in the global order; one premised on President's George H.W. Bush's visage of a 'New World Order' imbued with cogent reverberations of universalism, and the other predicated upon the Pentagon's conception of how the US should dispose itself, called the 'Pentagon Paper', essentially a concentrated extract from a neo-conservative policy initiative called the 'Project for a New American Century' (PNAC), swaddled in marked particularism.¹⁸¹ It goes without saying that, it's the configuration of these twin policy schemas that came to become predominant, in the unfolding policy debates and strategic discourse over Somalia.

Addressing the Joint Session of the US Congress in September 1990, themed 'Towards a New World Order', President Bush encapsulated his strategic vision for the

¹⁸¹The 'Pentagon Paper' would later become the blueprint for the 2002 'National Security Strategy', whose authors – Paul Wolfowitz and Dick Cheney, were instrumental, in the drafting of both.

ensuing period in world history, by wrapping it in an idiographic debate on the role of US foreign policy and national security, going forward. In a landmark address that covered much ground permeating an eclectic set of issues from the advent of globalization that was meant to usher-in an epoch of interconnectedness and interdependency, to the dynamics and mechanics of power politics as they would pan-out in an environ of economic interchange, through to the lurking dangers of countries being hewed and balkanized at the altar of visceral nationalism, all the way to the domestic compulsions and imperatives of economic transactions, technological ingress and integration.¹⁸²

Showcasing the challenges and opportunities latent to the new phase of world history, the address left an indelible etch on the sands of time, since it also illuminated some parameters, upon which policy distillations and dispositions, would come to situate themselves. However, not being a policy speech like the inured State of the Union address commended in January of every year, the peroration also ran the risk of being some things to all peoples, leaving scope for subjective interpretation and expression of what a ‘New World Order’ meant and implied from the vantage-point of the multitude of actors shaping US foreign policy and national security. Nevertheless, the domineering expression of what constituted a ‘New World Order’ conflated with President Bush’s visage of a universalised global order morphing into a collectivized and harmonious international society, underpinned by three indomitable hues; resolute American stewardship of the new world order; a collegial international approach to addressing global issues of concern; and a universalised ethic of responsibility for states to abide by and partake-in.¹⁸³

These aforesaid parameters, paved the way for the logic of deeper engagement with the Somalia dossier, since the case for intervention in concert emanated from the impulse and belief of a world order united by common tents of democratic behaviour and pluralist value-systems. However, before such an approach could become passé, it had to contend with alternative frames and conceptions of the unfolding world as narrated and argued in the formidable establishment driven ‘Pentagon’ Paper.

THE ‘PENTAGON’ PAPER

Albeit a laggard in terms of its emergence, in regard to the September 1990 ‘New World Order’ speech of President Bush, yet, the revelation of the Pentagon draft strategy

¹⁸²George H.W. Bush, ‘Towards a New World Order’, *Speech before Joint Session of Congress*, 11 September, 1990.

¹⁸³George H.W. Bush, ‘Remarks to the American Society of Newspaper Editors’, 9 April, 1992.

paper in March 1992, was a seminal juncture in the ideational evolution process, in laying out the milieu of challenges that beckoned, but reached a different destination, in terms of its conclusions and recommendations. Principal within the document was a categorical call for the United States to establish and sustain its standing as the pre-eminent global power, a virtual colossus of sorts, which could not be consummated through an insular hidebound and inward looking Washington focussed on recantation from commitments overseas, but one, where Washington is kinetically engaged in the global community, with enterprise, initiative and verve, so as to mould the global firmament, in its own espoused weltanschauung. There was an express mention of the requirement to be hands-on, not aloof and detached from regional instabilities, of course with prioritization towards those hotspots which concerned the US's particular interests.....“While the US cannot become the world's ‘policeman’, by assuming responsibility for righting every wrong, we will retain the pre-eminent responsibility for addressing selectively those wrongs, which threaten not only our interests, but those of our allies or friends, or which could seriously unsettle international relations. Various types of US interests may be involved in such instances: access to vital raw materials, primarily Persian Gulf oil; proliferation of weapons of mass destruction and ballistic missiles, threats to US citizens from terrorism or regional or local conflict, and threats to US society from narcotics trafficking.”¹⁸⁴ However, from the standpoint of the Somalia intervention, the elements within the Pentagon Plan were seemingly out of sync, and had this strategy prevailed at the President's desk, then the conditions for intervention in Somalia would be skeletal.

Within Congress, the sentiment in respect of the Pentagon Paper, of course which had leaked into the public domain, was anything but salutary. Senator Robert Byrd (D-WV) termed the exercise and its outcomes as “myopic, shallow and disappointing” while David Scheffer, a Senior Associate of the Carnegie Endowment for International Peace, wrote in the *New York Times* that the Pentagon Paper “unwittingly isolate[s] US forces from the real enemies—internal aggression and human rights atrocities—that collective internationalism is confronting.”¹⁸⁵ The withering critique had its impact as proponents and votaries of the classified Pentagon Paper exercise and strategizing beat a retreat, seeking to mollify concerns that Washington was planning to go it alone in world affairs by abandoning multilateralism, was poised to render short-shrift to its remit of cornerstone alliances worldwide, and would

¹⁸⁴ See “Excerpts from Pentagon's Plan: Prevent the Re-emergence of a New Rival”, *New York Times*, 8 March, 1992.

¹⁸⁵ David Scheffer, ‘Not the World's Policeman’, *Washington Post*, 7 April, 1992.

essentially act as a selfish rather than self-enlightened sovereign actor on the world stage. Hence, as the Pentagon Paper failed to meet with substantive traction, it faded away from internal discussion and possible policy deliberation, leaving the President and the White House's 'New World Order' cognitive idiographic frame, to be the only ideational identity game in town, so-to-speak.

The prominence of a distinctly internationalist turn in identity related discourse, marginalizing an overtly nationalist discourse, points to greater propensity for and in support of humanitarian interventions. However, for a sentiment within the flow of discourse to ingrain as policy disposition, would need it to induce a similar discursive discussion on interests, ethics and action alike.

INTERESTS

The humanitarian situation in war-ravaged Somalia, had been festering since early 1991, however, even as late as a full year later, it had not yet impinged upon the canvass of policymakers concern, whether in the US or worldwide. Yet, when it did during 1992, it found a convenient mating in the form of the incumbent US Presidential administration's idiographic commitment to moral universalism, and compassion that transcended boundaries. On-setting was an attempt by the US to communicate the scope, scale and gravity of the crisis, even as estimations of no less than twenty thousand having perished, and some three hundred thousand having been displaced, both strewn across the sovereign landscape within and extricated across borders, into adjacent Kenya for example, became hackneyed mentions.¹⁸⁶

However, where numbers can be bone-dry, visual imagery can be chillingly numbing to popular consciousness and imagination, hence, the situation was characterized as "an urban nightmare of war, lawlessness and impending famine", "a grim symbol of human tragedy, misery and degradation",¹⁸⁷ etc. However, this phraseology paled in comparison to the resonating effect that possessed in the words of Assistant Administrator of the United States Agency for International Development (USAID), Andrew Natsios, who bluntly termed it as "the worst humanitarian crisis in the world right now, with no exceptions."¹⁸⁸ Further grist to

¹⁸⁶Keith Richburg, 'In Somali Capital, Shrapnel Reigns; Civilians Pay Heavy Price In Artillery Duel for Power', *Washington Post*, 11 January, 1992.

¹⁸⁷Paul Lewis, 'Security Council to Pledge To Stop Global Aggression', *New York Times*, 24 January, 1992.

¹⁸⁸Washington Post, 'For the Record', *Washington Post*, 4 February, 1992. The phrase "world's worst humanitarian crisis," has since become a popular way to ascribe particular gravity, to one situation or another. Most notably, it has been used in recent years, in connection with the crisis in the Darfur region of Sudan, and in the Democratic Republic of the Congo.

the mill was added by similarly shared assessment from the Director of the Central Intelligence Agency (CIA), Robert Gates, wherein, it did not take long for the formulation to meander its way into journalistic reportage and electronic media ticker-tape.¹⁸⁹

Such idiomatic usage in pursuance of specific visual construction in popular understanding serves a dual purpose, in that, on the one hand it helps to emphasize the particular egregiousness of the situation and also differentiates and distinguishes it from peers seeking competing attention. Description of the Somalian crisis as the world's most aggravated conflict, smeared it with searing intensity of emotion, but also conveyed the enormity of the situation on hand, which set it apart from the savage crisis metastasizing in the Federal Republic of Yugoslavia. In due course, the competitive rationalization of conflicts in Somalia and Bosnia, made it to policy debates both within the US Congress and inside the Bush administration, however, recourse to universalised understanding rendered Somalia, a leg-up on the Former Yugoslavia.

THE LIMITS OF POLITICAL INTERVENTION

The emergence of a universalised identity discourse and a definition of interests in Somalia, in terms of support for human rights, is strongly suggestive of a potential for intervention. As of January 1992 and thereafter, there was hardly anything that even remotely resembled something called 'policy', either in place or in the works. Early in the piece there was every intention to define the Somalian crisis as essentially a political one requiring mediation and politico-diplomatic solutions, in light of the fact that federal authority had imploded, the autocratic leader of the country had fled the country, competing warlords were busy carving-up the country either by negotiated design or internecine warfare, and the insurrection playing itself out was in the context of autonomy for Somaliland or the outright creation of Greater Somaliland. However, it may be reasonably opined that had it not been for Senators Nancy Kassebaum (R-KA) and Paul Simon (D-IL), key flag-bearers shingling the Somalian cause within the United States, maybe the shift in gears within the Bush White House, in favour of a military solution or at least the consideration of a military dimension, may not have triggered.¹⁹⁰

¹⁸⁹See 'The Sorrows of Somalia', *Washington Post*, 12 May, 1992.

¹⁹⁰Nancy Kassebaum and Paul Simon, "Save Somalia from Itself", *New York Times*, 2 January, 1992. In this they called for the designation of a Special Envoy for Somalia by the Bush Administration, the imperative for the UN to call for an immediate and urgent ceasefire on the ground in Somalia, and the earnest imposition of an unqualified arms embargo.

While the UN did assign technical teams to ascertain for the veracity of the situation on ground and to take stock of the mechanisms in place for unfettered disbursement of relief supplies, both the enabling resolution which was the customary diluted affair that accompanies UN Security Council Resolutions, and the mandate of the technical team lacking teeth, undercut the potential and the imperative for incisiveness of signal, that needed to be purveyed, to protagonists in the conflict on all sides of the aisle.¹⁹¹ Despite the host of African member-states within the UN, almost in unison, calling for deployment of a peacekeeping mission to the country, even suggesting that should such a mission not eventuate it would be perceived as scornful indifference more than lackadaisical ennui on the part of the global body towards the existential concerns of Africans, amidst US pressure that excised the latitude for such a peacekeeping and only permitting for tacit allusion to it in UNSC Resolution 746, left the UN ham-handed.¹⁹² It's only in light of the acerbic criticism that pouted the US and the UN's way, that the US Congress adopted the Horn of Africa Recovery and Food Security Act, voicing the need for deeper attention to the human tragedy unfolding in Somalia, and for improvements to be instituted, in the delivery of relief supplies.¹⁹³

Subsequent efforts by the UN Secretary General to nudge the Council members, particular the permanent members to enable a specific Security Council Resolution, at least with unarmed military observers, who could verify for rectitude and recalcitrance on the field of battle, was also undermined as drawing on the SG's Report that advocated an escalated military presence, all that the Council would collectively concede vide according passage for UNSCR 751, is fifty unarmed military observers, whilst red-lighting the proposal for the five hundred strong armed contingent.¹⁹⁴ There was a tendency to hide behind the facetious dissemble of needing to ascertain more facts from the ground and for the cause of greater consultations amongst members, all short-hands for gross inertia and inaction.

However, UNSC Resolution 751, viewed by some as a half-way house compromise, but by many as an approach falling between two stools, came to constitute a turning point for US policy towards Somalia, a critical juncture in the causal complex that led to intervention. Amidst a firestorm of criticism directed the way of Washington and the Bush administration, for hamstringing the UN once again, both US Permanent Representative to the UN,

¹⁹¹UN Secretary-General, "The Situation in Somalia", Report of the Secretary-General, S/24480, 24 August, 1992.

¹⁹² Paul Lewis, 'Security Council Weighs Role in Somali Civil War', *New York Times*, 18 March, 1993.

¹⁹³US Senate, 'Horn of Africa Recovery'; US House of Representatives, 'Stop the Slaughter in Somalia', Congressional Record, 7 April, 1992, E978.

¹⁹⁴UN Security Council, 'Resolution 751', S/RES/751, 24 April, 1992.

Ambassador Thomas Pickering and Assistant Secretary of State for International Organizations, John Bolton, had to go public with disavowing protestations, pushing back against suggestions that the US had dropped the ball, and in a bid to douse the ambers of outrage, had to pin America's position to the mast on peacekeeping deployment, by committing to supporting the authorization of UN armed force.¹⁹⁵ This publicization of stance may be seen in the context of the Bush White House, wanting to align US's public credibility, in consonance and conjunction with the supervening identity discourse, which he as President had been peddling vide his New World Order dictum.¹⁹⁶ This express support for peacekeeping measures, to be appropriated to the Somalia situation, that came from none less than the United States, the most preponderant sovereign power within the United Nations, and which at the time held all the aces in determining the scope and contours for international actions, went further in its impact, than what many would have surmised at the time. It helped to circumscribe policy debates within a set promenade and winnowed the scope for interagency discourse to veer off course, besides ensuring that the discursive terrain which was already propitious to potential humanitarian intervention, as soon as the summer of 1992, found further reinforcement and ultimately morphed into the important 14th August announcement by the White House Press Secretary Marlin Fitzwater, of President Bush's decision to sign-off on a humanitarian airlift mission for Somalia, discerned at the time to be the stepping-stone to substantive US intervention in the country.

WHITHER A NEW WORLD ORDER?

Come June 1992 and the 'new world order' narrative had been forged on the canvass of inter-agency debates within the Bush administration, and the wider US government establishment. Even though the recommendations elicited in the Pentagon Paper had not been rubbished altogether, it was clear that particularism notions were drowning-out, in a sea of universalism motifs. The discursive terrain had narrowed appreciably such that, argumentation over purposive, ethical and instrumental issues, were now being framed and debated within the permeating sentiment of collective internationalism, rooted in universality of solidarity. Ironically, if the Bush administration had peregrinated into the summer of 1992 with criticism of their risk-averse policy stances on Somalia, now they were hoist with their own petard so-to-speak as the very 'new world order' narrative was being mobilized against them, asking for the US to maintain global leadership even whilst fulfilling

¹⁹⁵Thomas Pickering, 'US Backs Efforts to Assist Somalia', *New York Times*, 9 May, 1992.

¹⁹⁶Paul Lewis, 'Reined In by US, UN Limits Mission to Somalia', *New York Times*, 26 April, 1992

their moral humanitarian obligations, and queries as to why wasn't the rest of the privileged world doing their bit too.¹⁹⁷

Just as the new world order nomenclature was fully internalised, within an activist posture of US policy vis-à-vis Somalia, there was an implicit acceptance underlying that, the United States should rightly be concerned with the suffering of others, and might reasonably be expected to take the lead, in a collective internationalist response. As the Senate debated US policy in Bosnia, the House considered the same question in respect of Somalia, debating its concurrence to Senate Concurrent Resolution 132, which called for the deployment of UN security guards to protect relief convoys in Somalia, a proposition that was met with near unanimous consent on the floor. And, again, the debate focused on the United States' responsibility to take the lead in devising solutions. By this point, it is quite clear that the new world order discourse not only dominated the debate, it overshadowed every other perspective. The content of this identity was by now firmly established, and it faced little in the way of continuing contestation. America, it seemed, had determined for itself that its identity was as the leader of a collective internationalist world community, based on values of solidarity and respect for human rights.

Although the ideation of a new world order had pervaded the humanitarian discourse configuration and trajectory to the point of virtual ubiquity, the establishment of humanitarianism as a significant policy concern, nevertheless, wore a rudderless look. It wasn't until deep into the summer of 1992, that it acquired a bolstered form, wherein calls for tangible action of humanitarian beneficence, grew shriller. As was the thrust of a New York Times editorial of the time, the appreciation for some form of militaristic footprint but in support of the humanitarian aid disbursement activity, was developing. Notwithstanding, a raft of US House Representative members and Senators, voiced their collective support for a substantive and robust policy posture on the part of the Bush administration. Each of them pointed out the existential threat that ordinary Somalians faced from the degenerative situation, which was an amalgam of insecurity and humanitarian plight, where neither could be prioritized at the expense of the other. Similarly, a Washington Post editorial disaggregated the death toll of approximately six thousand in Bosnia with the tens of thousands who had simply perished amidst lawlessness in Somalia.¹⁹⁸ Such attempts at linkage and distinction, is crucial to drive policy, on the path of intervention. After being hauled over the coals for its

¹⁹⁷Shari Rudavsky, 'Bush, UN Face Pressure to Aid War-Torn Somalia', *Washington Post*, 27 July, 1992.

¹⁹⁸See 'Indifference and Somalia', *New York Times*, 23 April, 1992.

anodyne politico-diplomatic disposition, the Bush administration was girdling its loins to act more decisively than before, in both Somalia and Bosnia, but was careening in favour of precedence for Somalia.

ETHICAL DILEMMAS OF CONSISTENT UNIVERLISM

The issue of selectivity, in appropriation to and determination of a dossier of intervention, is a running concomitant of the policy cycle on these issues. Even as Somalia was pining for help, the Bosnia situation began to grip attention and preoccupy mind-space, to the potential detriment of the former. As evinced interest in tending to Somalia showed vestiges of waning, the UN Secretary General Boutros BoutrosGhali chose to publicly chastise Security Council members for deflecting attention away from Somalia, calling such detraction in favour of a “war of the rich”, as quite unconscionable in the eyes of ordinary Africans witnessing the UN’s purported double standards.¹⁹⁹ UN Secretary General Ghali was of course joined in chorus by Administrator Natsios of USAID and sections of the media, who called out the international community, on their unabashed double-speak, in their drawing of a moral equivalence of the appalling transpiring and respective plights, of those subsisting in Mogadishu and Sarajevo.²⁰⁰ Such admonishing served to focus attention back onto Somalia and keep the momentum on politico-diplomatic and humanitarian-security response, chugging along. Despite this, there were the fair share of naysayers and sceptics, such as Senator Bob Dole (R-KA), who picked up the threads from where fellow Senators John McCain and Robert Byrd had left off to amplify the dangers of getting embroiled in Somalia, for fear of this turning out a slippery slope of commitments, bedraggling Washington into the quagmire of many a global hotspots, in the mould of a globo-cop. If anything this proved that, even adherents to particularism over universalism, acknowledge that, an orientation towards humanitarianism is steeped in intrinsic universalism.

FIGHTING A RICH MAN’S WAR ON THE CHEAP –THE BALANCE OF PROBABILITIES

The potential cost that may be exerted on a humanitarian intervention mission, not just in terms of treasure expended, but more importantly and instructively, in terms of the human toll of body-bags, needs to be objectively and transparently addressed prior to the operation per se. As discussion traversed a winding course, it became evident to one and all that, Bosnia

¹⁹⁹Seth Faison, ‘UN Chief Mired in Dispute with Security Council’, *New York Times*, 24 July, 1992.

²⁰⁰Martin Ganzglass, “Somalia Deserves as Much as Sarajevo”, *Washington Post*, 12 July, 1992.

was going to be a much pricier proposition than earlier anticipated, involving the stationing of scores of US troops over an extended timeline, with few if any exit options, excepting to cut and run. In contrast, Somalia by all accounts, was going to be a niggardly mission, on the relative cheap. Besides, the unceasing streaming of visual imagery, displaying emaciated and gaunt Somalians with daily chores of fighting off war, and fending off drought, and enduring periods of maladroit governance to boot, seemed to tip public opinion, more decisively, in favour of getting the low risk job done.²⁰¹

During the early going, the overriding view within the Bush White House, percolating through the administration's ranks, was to undertake a limited political intervention, so as to get the matter done and dusted, possibly not sufficiently sentient of the formidability of the task on hand. However, as matters came to a head realisation dawned that this was going to need some form of militarized deployment. The harbinger for Somalia, to descend into galling famine, was on the anvil for a while, further exacerbated by the scourge of clan-warfare, rapacious plunder and associated depredations of conflict. All of these and more, were stymieing factors, to the disbursement of relief supplies to a marooned citizenry, yet, an appropriate and proportionate security response, was not facilely forthcoming. Despite the clamour for a security footprint on the ground in Somalia carrying strong backing, across idiographic, purposive and ethical discourses, still, a robust interventionist presence was a long-shot priority for Washington. The resource-instrumental concern, over the potential loss of life in any military intervention, is a significant factor, in dialling-down down the impetus, towards such a course of action. This concern was reflected in the still considerable degree of hesitancy, regarding what precise form should relief efforts take, under capricious concourse of circumstances. In the words of the UN Secretary General Boutros BoutrosGhali and his Report to the Council of 22nd July: "the complexity of the situation and the inherent dangers of working in Somalia ... pose enormous operational difficulties for the United Nations in establishing a large-scale and effective presence". Nevertheless, it was argued, "the threat of mass starvation ... and the potential renewal of hostilities" required "an immediate and comprehensive response". However, the resource-instrumental concerns stand counteracted, by the idiographic and purposive demands for action, exuded in Senate Concurrent Resolution 132, pertaining to the civil strife in Somalia, introduced with the support of as many thirty-one Senators, which is close to a third of the strength of the Upper House of US Congress.

²⁰¹Warren Strobel, *Late Breaking Foreign Policy: The News Media's Influence on Peace Operations*, (Washington DC: United States Institute of Peace Press, 1997), p. 147.

The outcome of this tension, between competing demands, manifested itself in policy. Though the discourse did not yet militate for full military intervention by the United States, the case had nevertheless been made for increased relief efforts, coupled with steps to deal with insecurity. Long thought to have been opposed by the Bush administration, such an operation was now openly approved. In a press conference on 27 July, White House Press Secretary Marlin Fitzwater urged the UN to “move as quickly as possible to deploy an effective number of security guards to permit relief supplies to move into and within Somalia”, and indicated the US government’s willingness, to “contribute generously”, to the financial underwriting of the effort.²⁰² And the US government followed through on its promise. When, on 12th August 1992, the UN announced that agreement on the deployment of the 500-strong security force had been reached, the White House promptly offered a military airlift to get the UN guards to Somalia.²⁰³ And, the next day, the White House went one further, by announcing that it intended to commence its own emergency airlift operations to Somalia, table a new Security Council resolution authorising “additional measures” to ensure the delivery of humanitarian relief and to convene a donor’s conference to improve the delivery of relief.²⁰⁴

There has been abiding chatter about the precise motivations of President Bush, concerning the timing of his announcement of the military airlift of supplies to Somalia, which in effect was the first meaningful tangible measure the US government had undertaken on Somalia, till then. With the airlift undertaken just three days prior to the commencement of the Republican National Convention on 17th August, it is only within the plausible realm of possibility that, the timing of the airlift was done with one eye on showcasing it at the RNC, as a decisive step in alleviation of the humanitarian distress in Somalia, for purported electoral gains at the husting. Should this be true, it would not be all that surprising, as US Presidents have in the past, harnessed pivotal junctures in international affairs, to brandish their dexterity at statecraft, and their credentialed stewardship of foreign policy and national security issues. If President Bush was injecting an issue of foreign policy into a campaign, which until that time, was noticeably coalesced around domestic issues, most notably the state of the US economy, he would only be following in the lead, of many of his illustrious

²⁰²Marlin Fitzwater, “Statement by White House Press Secretary Fitzwater on the Situation in Somalia”, 27 July, 1992.

²⁰³Marlin Fitzwater, “Statement by White House Press Secretary Fitzwater on the Military Airlift for Humanitarian Aid to Somalia”, 13 August, 1992.

²⁰⁴Marlin Fitzwater, “Statement by White House Press Secretary Fitzwater on Additional Humanitarian Aid for Somalia”, 14 August, 1992.

predecessors of yore. After all, President Bush was the Commander-in-Chief during whose presidency the perpetuating Cold War drew to an actual denouement; the Gulf War against Iraq was prosecuted to a nifty nicety, and now this humanitarian crisis tucked away in Somalia was staring him in the face, in starkly challenging him to rise up to his own averment of a 'New World Order', undergirded by notions of moral universalism, common humanity, and the ilk.

Having taken the maiden tangible step to fructifying success of humanitarian relief measures in Somalia, the fallacy of an action commandeered, without adequate assiduousness and diligent examination of ground situation, was written large on a mission that had come a cropper. It was self-evident truism that the mission could not possibly be accomplished without putting boots on the ground and getting dirty, through a robust force posture that could efficaciously deter the curmudgeons, deviously recalcitrant non-state actors, and knavish sub-national clannish groups. As attention condignly focussed on accomplishing success on the ground, the pacification of Somalia in pursuance of its stabilization, became a much vaunted objective as critical as feeding the hungry and the emaciated. No wonder then that, on 4th December, the Bush administration took the intrepid step of commissioning thirty thousand ground troops to Somalia, albeit under circumstances where, the incumbent President had little to lose if any, having already lost his re-election to challenger Gov. Bill Clinton, and also undertaken after such prevarication and protracted foot-dragging, that it brings to recall the famous adage, about the US and its famed stumbles into foreign entanglements, i.e. that America almost always does the right thing, but, after it exhausted everything else.

THE CREDIBILITY OF COMMITMENT

Through the first eight months of Somalia being under the Bush White House's microscope for idiographic and purposive reasons, Washington had acquired a fair sense of what their interests were as also their identity. When the US airlift was finally commissioned, it got off to an iffy start, generating conjecture and intrigue about an operation that had gone awry on the first attempt itself. Not only had the airlift come up short, but it reinforced the view held by many that to cement humanitarian relief activities across the length and breadth of Somalia, required nothing less than a physical security presence, alongside sorties of food being flown in. It was this instrumental discourses process that convinced the powers that be, of the ineluctable situational requirement, and contributed to the transformation of the humanitarian relief mission to a ground forces supported operation. Also in light of the

fraught airlift operation, getting this right was important for the sake of US credibility in what was the proverbial ‘unipolar moment’ in history, as beating a retreat from Somalia, would be deeply embarrassing and discrediting, to the overwhelmingly dominant discourse of the time.

Clearly, one could not underscore the importance of the media and the agency of its medium, in terms of its impact on shaping policy at the time. However, its bullish impinge on the ultimate trajectory of policy instrumentality must be objectively reappraised, beyond the initial brush of enthusiasm. Myriad studies have come to the conclusion that the so-called “CNN Effect” has tended to be exaggerated since empirical evidence of media coverage of the Somalia crisis points to the coverage not necessarily engendering dissemination of the event and the incidents therein, but instead serving to amplify the situation in pursuit of policy action rather than precipitating it, borne out topically enough by the coverage of the 14th August 1992 decision of President Bush, in relation to the coverage that transpired, prior to it.

While the foregoing is suggestive of the dint of Bush administration policy trajectory having been moulded by factors outside of the media and its invariable pressure, this ought not to result in the summary dismissal of the media as a factor and its role within the long drawn out policy process, particularly given that a massive leap of faith was required to transform what was essentially primed to be an intervention on the arguable cheap leap to what ultimate panned-out in terms of an expansive militarized intervention, involving deployment of boots on the ground, something which is anyways a high threshold, for American decision-making.

This said, the media was at it through the process, with coverage largely coalescing around examining what would it take for the Bush administration to come through and square-up with the President’s own ‘New World Order’ commitment. The consequent critique to what was perceived as a process punching below its weight evoked plausible queries about the resource-instrumental and strategic-instrumental reasoning, which came into sharp focus with supervening discussions over identity and interests, i.e. material facts on ground, which are coloured by the ideational context, within which they stand to be decoded and interpreted. Despite the media’s predominant preoccupation with the dynamics of the US Election cycle, there was no taking the eye of this ball, as coverage was intensely searching, in the wake of the failed airlift bid, of 14th August 1992.²⁰⁵

²⁰⁵Over 80 news articles appeared in the *Washington Post* and *New York Times* alone, in this period, which made reference to the flaws in the airlift, many of which had the issue of effectiveness as the main theme, and many of which made it to front page news.

By the end of July 1992, experts across the strategic and policy community were of the united view that, the palliative of emergency airlifts of food and other relief supplies, into Somalia, was both belated and insufficient. Given the pervasive sense of insecurity, unleashed by permissive levels of violence, as an upshot of the searing clan warfare, nothing short of a robust footprint on ground would be requisite. The presence of about five hundred Pakistani peacekeepers in Somalia, were deemed grossly underwhelming for anything outside of the capital Mogadishu. As the US's aerial relief sorties began to swoop-in, operational and tactical problems showed up, with criticism of US posture ranging from being declared as cosmetic tokenism to win brownie points and bragging rights.²⁰⁶ Clearly, it could be read that the US had sized up the situation more accurately than others and despite being the runaway global power and an enviable military machine, since this mission was demanding of a ground based intervention, Washington was developing cold feet in pushing ahead with mojo. Amidst this spectre, some media accounts such as the Washington Post's story called for introspection as to whether the US involvement in the detached play-it-safe manner that it was, helped or hindered the overall efficacy and outcome of Operation Provide Relief. The abrupt resignation of UN Special Envoy Mohamed Sahnoun, upon receiving instructions from New York that, he should consult and coordinate with warlord Farah Aideed, over the deployment of the five hundred Pakistani soldiers, was seen as the proverbial straw, which broke the camel's back.

SECURING HUMANITARIAN RELIEF

The equation, of deployment of a designated peacekeeping force in Somalia, was the subject of uncritical endorsement, prior to the frustrations of the United States' failed airlift attempt. However, as problems manifested themselves, it was crystal clear that the difficulties lay in organizing the delivery, storage and disbursement of relief supplies which could not be accomplished without the protective corral of a peacekeeping force with muscular mandate. Pressure began to build domestically within the US as Congressmen such as Eliot Engel of New York sought to nudge US's role in participating to secure relief shipments, a position that went beyond the earlier sounded platitudes from Washington.²⁰⁷ Since the October 1992 pivot moment, matters began to turn on a dime. Media pressure for heightening the scale of

²⁰⁶Relief agencies accused the United States of wanting the publicity of staging a dramatic airlift without coordinating it with other relief efforts underway and without going to the neediest of townships. The World Food Program Spokesman Paul Mitchell, when asked whether the US airlift was helping, discounted the fact of such action imbuing any value addition to the operation.

²⁰⁷Keith Richburg, 'Delivery Questions Delaying Airlift of Food Aid to Somalia', *Washington Post*, 20 August, 1992.

involvement was evident in the Washington Post editorial which read that “*Desert Storm-type determination is warranted, and President Bush should say so and act accordingly.*”²⁰⁸ Similarly, a New York Times editorial of 19th November similarly noted that “administration officials already admit they need a ‘shoot-to-feed’ policy. Now they should act on what many of them privately believe—our own forces must do the shooting, and, if the UN dawdles, go it alone.”²⁰⁹ The next day, the same paper argued that, “force—military force—must be used to protect the relief effort from the gangs. ... A few thousand well-armed troops with a clear mission could make all the difference in Somalia.”²¹⁰

As consensus began to shape-up over concerted action that would be noticed and would impact the ground situation, first the State Department in November 1992, announced the deployment of some three thousand authorized UN security forces to Somalia, which was spiked up to a handsome twenty thousand during Secretary of State Lawrence Eagleburger’s meeting with the UN Secretary General and fellow Security Council member Foreign Ministers. Upon the UN Security Council adopting UNSCR 794 on 3rd December 1992, the following day, President Bush delivered his prime time address to the nation, outlining the conditions and rationale, under which US forces were being deployed to Somalia. Bush’s address laced all major themes that constitute the idiographic discourse within US policy-making, and contributing to identity formation and setting and interests’ articulation. From the desired imperative to undertake this mission to establish the superiority of American global power status to the US’s need to address human rights and humanitarian empathy issues, to the need for commissioning the mission owing to the inadequacies noticed in the remoteness of airlift operations, they spoke individually and collectively to the idiographic, purposive, ethical and instrumental discourses, within the US’s strategic cognitive thinking.

The cynics have punched holes in the Bush hallowed moment, by suggesting that, his commissioning of the robust military footprint, almost a month after his defeat in the election, was his way of securing legacy for posterity. While it is no crime to seek your place in the pantheon-sweep of US Presidents and their stellar accomplishments, one might ask, as to how would this action, at all burnish the Bush legacy? For a President who had his sleeve emblazoned by the sterling achievements of ending the Cold War, and winning the Gulf War, this commandeering of the US military intervention, in defence of human rights and

²⁰⁸Milton, “Promote Sustainable Life in Africa”, *Washington Post*, 6 October, 1992.

²⁰⁹Leslie Gelb, “Foreign Affairs: Shoot to Feed Somalia”, *New York Times*, 19 November, 1992.

²¹⁰Lewis, “Abroad at Home: Action or Death”, *New York Times*, 20 November, 1992.

humanitarian emancipation, within a nondescript and mofussil country and region at the time, packaged him as this proverbial Leader of the World, spearheading a nation dyed in collectivized internationalist values acting in solidarity with other sovereign peers in transforming the world for the better. The storied tale of American intervention in Somalia aligns with such an identity discourse noted above and chimes with other notable foreign affairs success stories on his watch, such that they epitomize a composite holistic legacy. The fact is US intervention in Somalia can neither be explained through gravitation based on pull factors of national interest, nor can they be rationalized, on the grounds of satiating the capricious whims of a Presidential occupant, who was given to heady nobility of normativity. The intervention occurred through a collegial identity-driven process of policy formulation.

Since the early period of 1992, the two dominant discourses of universalism and particularism have ruled the roost, in contending over the configuration of US identity in foreign policy. The Universalist discourse ran out prominent, underpinned by a support for human rights, that exemplified US involvement in the Somalian crisis in the first place. If not for the self-reinforcing critical junctures in the US policy trajectory towards Somalia, it is inconceivable to imagine how Washington would have got itself into hock with the conflict and its malaise. Although the comparative weight of possibilities, for intervention in the Former Yugoslavia and Somalia, came into reckoning, it still could not reconcile the fundamental disjuncture, between the idiographic and purposive imperatives and instrumental concerns, inherent in it.

Instructively enough, if not for the failed bid of the US airlift measure in August 1992, the prospect of bringing the ensuing discourse trajectories into alignment, with the supervening idiographic and purposive discourses, would have not been made possible. The dovetailing of the ideographical, purposive, ethical and instrumental discourses, into a relationship of positive synergy, provided the crucial linkage, establishing a causal complex, through which a policy of military intervention, became the primary means by which the United States could realise its stated identity. The foregoing analysis, establishes the strength of the identity-based approach to the analysis of rationales for humanitarian intervention, the necessity for synergies between different levels of discourse, as well as the importance of sequentiality and critical junctures.

INTRODUCING EQUANIMITY IN PRAXIS – U.S. INTERVENTION IN HAITI

Haiti and its democratic troubles and humanitarian travails, has come to constitute one of the more complex instances, of intervention case studies. Quite apart from the befuddling question as to how it met with action, when the dust of Rwanda and international inaction thereupon, hadn't yet settled, it also is fascinating for the most wide-ranging and diverse set of explanations for US involvement, across all cases under consideration, and across interventions possible in the 1990s. This case study within the Chapter will show that the role of positive and negative synergies, between different idiographic, purposive and instrumental levels of discourse, as well as the role of critical junctures, was fundamental in moving Clinton's America, from rhetorical commitment, to an abstract ideal, through to a high-cost policy. As with the other case studies being examined in this thesis, the explanations for US intervention in Haiti found in the existing literature, is not without basis. Each explanation brings focus, to what were clearly important issues, yet, none provide a particularly satisfying explanation in isolation, or, indeed, in a non-theoretically based combination. The key to understanding, how a set of seemingly innocuous factors conspired to drive the United States to war, is again, to use the *via media* to locate these within a theoretical framework in which identity drives policy, and in which positive and negative synergies between levels of discourse, and the role of critical junctures play a significant role. The Haiti case does indeed constitute the most complex case, and as such, it is also the most illuminating.

FOREIGN POLICY ROLE: WEIGHING UP THE 'CLINTON' DOCTRINE

The first year of the Clinton Presidency, was replete with paradoxical trends, in the context of the US's idiographic discourse. Notwithstanding its subsequent decline in fortunes, the intervention in Somalia, the previous year, was touted as a seminal moment in Post-Cold War American history. As candidate Clinton, the newly installed Democratic President had been in support of the mission, based on the premise of 'collective universalist internationalism.'²¹¹ However, the Presidential electoral cycle of 1992, was flush about domestic issues, with the state of the economy in the main, such that Gov. Clinton had brought on, what came to become the bumper-sticker tag line of "it's the economy stupid."²¹² Even if one were to concede that President Bush had attempted to inject his touted foreign policy successes at the time, it's evident from the results that, electorally, they came unstuck.

²¹¹Reuters, 'Excerpts from Clinton's Speech on Foreign Policy Leadership', *New York Times*, 14 August, 1992.

²¹²Thomas Friedman, 'Despite Good News, Clinton Says, Economic Ills Remain', *New York Times*, 9 December, 1992.

Hence, it may be said that despite internationalism holding the fort in terms of identity setting within discourse, nevertheless, this was compensated by factual circumstances of the environment of the time, viz., that economic considerations were materially influencing the policy calculus of the newly installed echelon leadership of the time. This said, an American President can never have it all his way, and has to deal with the hand he or she is dealt, in the ordained nature of government continuity. President Clinton, for his part, got drawn into a slew of prickly foreign policy dossiers that became part of the baton-handing from Bush to him, a turnover, which was also a case of transition from three successive Republican Party Presidencies (1981-1993), to that of the Democrats now. Needless to state, it was this accosting ambience within which, the Clinton doctrine of ‘Assertive Multilateralism’ was seeded; an endeavour at dovetailing the seemingly incompatible elements and impulses, within the structural domain of policymaking at the time.²¹³ However, these contradictions would persist in undermining the new initiative, and contribute to an equivocating period, albeit an interregnum of sorts, within US foreign policy during the years of 1993-94.

At one level, the doctrine of assertive multilateralism was in hock with the collective internationalism principle embodied in Bush’s ‘New World Order’ strategic framework, which meant an abiding US interest in fostering shared solutions to global challenges and threats during the post-cold war period, including a partake in addressing ethno-nationalist and other civil strife related virulent crisis, mushrooming up in conflagration around the world, of course, through an approach that would have the UN’s Peacekeeping mechanism, centre-stage. Yet, on another level, the doctrine of assertive multilateralism also counselled against an indiscriminate plunge headlong into all such conflicts, anchored in the pragmatic realisation that US interventionist involvement could not be the one size fits all broad brush antidote to all violent gripes, besides, it was imprudent of the world’s sole superpower, with pressing economic problems at home to be frittering away valuable fiduciary resources on remaining a proverbial imperial power in overstretch, at a time when conditions were finally propitious for a retrenchment from world affairs, albeit calibrated and glacially undertaken. As United States Permanent Representative to the UN, Ambassador Madeleine Albright characterised it: “the challenge facing US security policy today ... leaves us with what I call the two Ostriches problem. One ostrich would rather not see any predators and plunges its

²¹³It was the US Permanent Representative to the United Nations, Ambassador Madeleine Albright, who coined the phrase, in a Statement before the US House of Representatives, Committee on Foreign Affairs, Subcommittee on International Security, International Organization, and Human Rights, Washington, DC, 24 June, 1993.

head into the sand. The other hears the clamour of friends in need and miseries to assuage, and runs off in all directions at once”.²¹⁴

The Clinton doctrine of ‘assertive multilateralism’ attempted to plot a middle path, through a congruent blend of the two juxtapositions, which implied doing adequately enough to maintain the US’s predominant position and superior edge in global affairs and interchange, yet, also entailing cornerstone allies and globally spread strategic partnership to shun the Cold War epoch piggy-backed free-riding and to engage in reasonable and affordable levels of burden-sharing too. At the time of Congressional debate over determining the renewal of legislative authorization for the US’s Somalia mission during May 1993, Congressional leaders, in particular the likes of Congressman Tom Lantos (D-CA) and House Majority Leader Dick Gephardt (D-MO), besides others, affirmed their support for this newly fashioned doctrine, that was to be a signature of the Clinton White House, going forward.²¹⁵ However, the discourse was far from one way street, with no dearth of sceptics, in particular Congressmen Gerard Solomon (R-NY) and Bill Goodling (R-PA), who exhibited their spooked demeanour, at what they felt was a carta blanche being accorded to the Clinton White House and the United Nations, on Somalia, which could hurtle Washington, down the slippery slope of unrequited entanglements.

Despite concurrence that the US should not forsake its preeminent standing in world affairs, there was nevertheless a sense of foreboding apprehension at remaining committed in a manner that smacked of extended engagement with global transpiring, almost to the point of being possessively obsessed, with international developments, particularly virulent crises in nondescript theatres and treacherous landscape coordinates. And although Clinton, in the mould of a liberal democrat that he presented himself to be, was sold on the imperative for contributing to progressive democratization of regional spaces, and enshrining free market economics and respect of human rights as pervading creed of international society, he was equally sentient, to the cautioning of those who advocated, prudent not reflexive internationalism. As a consequence, the idiographic streak impinging on America’s role in the world, endured through the greater part of early 1993; however, as the year wore on, discernible metamorphosis in President Clinton’s cognitive thought-process began to eventuate itself, as he began to commend pronouncements whose import was that the US

²¹⁴Madeleine Albright, “A Strong United Nations Serves US Security Interests”, Address before the Council on Foreign Relations’ Conference on Cooperative Security and the United Nations, 11 June, 1993.

²¹⁵US House of Representatives, “Resolution Authorizing the Use of United States Armed Forces in Somalia”, Congressional Record, 25 May, 1993, H2744.

could not be the panacea or elixir for all of the world's vexing problems, by embroiling itself in conflicts and hotspots, compulsively, although he reaffirmed America's commitment to democracy, good governance, economic freedom and human rights in temporal and normative terms, as continuing issues of engagement, for Washington.²¹⁶

An intriguing reference point for the administration's internal thinking brought on by interagency debates behind closed doors, was the commentary proffered by then Under Secretary of State for Political Affairs Peter Tarnoff, who in an off-the-record luncheon briefing to White House pool reporters seemed to confirm whiff of the Clinton White House curating down to a policy of enlightened multilateralism, the fleshed out construction of which virtually bore the imprint of what the ensuing Secretary of State Madeleine Albright articulated in the famous quip of "multilateralism, where we can; unilateralism, where we must."²¹⁷ Not only did the administration distance itself from Tarnoff's remarks, describing them as 'Brand X' and not official policy, it became clear by September 1993 that, the Clinton administration was well on its way, to calibrating US outlays on international engagements, comporting, with equities at stake. Through the phalanx of speeches from different dispatch-boxes as also the most high-profile of President Clinton's address to the UN General Assembly, Washington was now recurrently adducing attributes of mission costs, feasibility of conditions, prospects for durability of improvement to be consummated across hotspots, and willingness of peers to burden-share, besides other considerations.²¹⁸ These dimensions evocated from President Clinton, National Security Adviser Anthony Lake, and US Ambassador to the UN Madeleine Albright's speeches, were neither impromptu nor off-the-cuff, as these considerations preoccupied the US's unveiling of the Presidential Decision Directive (PDD-25).²¹⁹ It was clear that whilst there was no jettisoning of the principle of collective internationalism, there was to be no blanket, across the board commitment, to all manifestations of global problems, either. The US's leadership and chaperoning of the international system was to be preserved and sustained, but in an enveloping condition of chastened and sobering pragmatism, not hubristic insouciance.

Elaboration of the doctrine of assertive multilateralism foregoing, behoved on account of the fact that this doctrinaire approach characterized the Clinton administration's handling

²¹⁶Bill Clinton, 'Remarks to the American Society of Newspaper Editors', 21 June, 1993.

²¹⁷Madeleine Albright, "Use of Force in a Post-Cold War World", Address at the National War College, 23 September, 1993.

²¹⁸Bill Clinton, "Confronting the Challenges of a Broader World", Address to the UN General Assembly, 27 September, 1993.

²¹⁹Anthony Lake, "From Containment to Enlargement", Address at the School of Advanced International Studies of Johns Hopkins University, 21 September, 1993.

of the humanitarian layered politic-security and socio-economic travails of Haiti.²²⁰ Being the subject of long harangues by sections who have critiqued Washington's inveterate tendency to stomp around with a big-stick in Latin America, its reckoned politico-diplomatic backyard, the US under President Clinton seemed initially content in being foreshadowed by the United Nations, in appropriating itself to the unravelling situation on the tiny, fragile island of Haiti.²²¹ Even prior to the unfolding of events during October 1993, that would threaten to suck the US into its vortex, the pattern had been forged for the temporal nature of American engagement and consequently did not behold great enthusiasm, for any kinetic US posture towards Haiti, as substantive realist concerns appeared set to predominate over neo-liberalist notions within the overarching frame of 'assertive multilateralism.' In retrospect it may be contended that, the doctrinal approach of assertive multilateralism was afflicted by shoddy articulation, lending itself to strident contestation, and rendering it unwieldy in identity formulation, and susceptible to selectivity in engagement and appropriation to international crises.

DEMOCRACY, BUT AT WHAT COST?

Having triumphed against the run of play so-to-speak, the last thing that incoming President Clinton wanted is to contend with a poisoned chalice, right of the bat. Having his hands full with navigating through the serpentine fortunes in Somalia, and with ethno-nationalist virulent upsurge in the Former Yugoslavia already part of the presidential transition handover, Clinton could not have imagined a dishevelled crisis, almost on his doorstep. But that was precisely what he unwittingly got. In the wake of the mass exodus of Haitians, fleeing the coup mounted by General Raoul Cedras, President Bush had turned-on the spigot of the 1981 treaty with the tiny Caribbean island which permitted the US to arbitrarily repatriate any and all Haitians who may be interdicted at sea, a compact which Clinton had unequivocally pronounced, as iniquitous and morally debased, whilst on the campaign-stump. He alternatively proposed at the time to temporarily shelter such Haitians, until democracy and normalcy was not restored back to Haiti, after which their status would be amicably sorted out. Even as Clinton geared up for his inauguration, news filtered through

²²⁰Howard French, 'A Clinton Doctrine, Perhaps, to Be Tried Out in Haiti', *New York Times*, 18 April, 1993.

²²¹The US approach and posture towards Haiti was meant to serve as a precedent-setting example of the new methodological deployment of American power in the Hemisphere; muscle dramatically deployed behind concerted international action in favour of democracy." Through this approach, "American muscle was meant to be held in reserve – always visible, but deployed as little as possible, in pursuance of rendering the United Nations diplomatic offensive, successful.

that close to one hundred fifty thousand Haitians were poised to teem onto US's shores, citing imminent threat of persecution and palpable fear of physical extermination, back home. If the incoming administration simply twiddled its way to inertia, it would portend a humanitarian crisis of monumental proportions on America's watch, in terms of those arriving ashore, as also scores of those, who would perish in their desperate flight across the turbulent waters. However, to balk from its commitment so close to home, would sully America's credentials and reinforce reputation of US interest in conspiratorial shenanigans at far off places, not to mention that, it would be a dent in the neo-liberal agenda of governance for home and abroad, and a discrediting patch for a young cherubic politician, who had portrayed himself as the breadth of fresh air "New Democrat", within the ideological pantheon and policy firmament of his party.

Taking recourse to assertive multilateralism, but effectively seeking refuge within the paradoxical nature of the doctrinal approach, Clinton decided to stick with the arbitrary policy accord with Haiti, which buffeted the US with legitimate authority to summarily deport Haitians, back home.²²² The justification was as sheepish as it was disingenuous, as Clinton pointed to the dingy, rickety boats that Haitians were availing off to flee for safety, which endangered their own physical safety and well-being, as cause for him to be casting his lot with the 1981 treaty provisions; an alibi or ruse, hardly credulous to anyone, himself included.²²³ Nevertheless, he did promise a review in due course, but no to a knee jerk pivot.

It was evident to all and surely to the Americans that, if the situation in Haiti had to be addressed satisfactorily and efficaciously, then it had to embrace a comprehensive approach and not be hived into piecemeal considerations. The humanitarian crisis festering within Haiti and boiling over with streaming refugees was unleashed by the summary usurpation of democratic power and constitutional authority through the abrogating step of the Haitian military. While it was no one's brief that Haiti was a halcyon place in terms of human rights situation of its citizens or that not a smidgen of Haitians had been going over to the United States prior to this cataclysm, yet, it was a no-brainer that such mass exodus was precipitated by an event, that was patently illegal, palpably brutal, and instructively regressive, in political, economic, security, and humanitarian terms. Hence, restoration of the legitimately elected dispensation of Haiti under newly installed President Jean Bertrand Aristide was a preconditioning imperative to addressing chaotic anarchy and the outpouring of refugees

²²²Al Kamen and Ruth Marcus, 'Clinton to Continue Forcible Repatriation of Fleeing Haitians', *Washington Post*, 15 January, 1993.

²²³Elaine Sciolino, 'Clinton Says US Will Continue Ban on Haitian Exodus', *New York Times*, 15 January, 1993.

alike.²²⁴A categorical commitment to the above objectives from President Clinton would not only chime well with his professed support of collective internationalism in support of upholding democracy, human rights, and economic freedoms, but would also reassure Aristide and petulant Haitians that help was on its way and they needed to bide their time, thereby possibly attenuating the numbers of those proactively fleeing to Florida's shores.²²⁵Caught in a cleft-stick spectre of being straddled in a rock and a hard place with the prospect of being damned if you did and also if you didn't, contradictory dimensions of assertive multilateralism competed for attention amidst an idiographic discourse of identity and interests setting. Surely, the Haitian crisis was an elemental litmus test for the new doctrine.

AN UNEASY COMPROMISE: ROTTEN CARROT, BROKEN STICK

A well-crafted US policy response that had equanimity between humanitarian relief objectives and the wider goals of resuscitating democracy back in Haiti, was in order, particularly in light of the telegenic visibility of an apparently lopsided policy axis, skewed in favour of alacrity to attend to the refugees problem, but slothfully evasive and perceptibly tardy, on the deeper question of ensuring the constitutional return of deposed President Aristide, to echelon public-office, back in Port au-Prince. What further reinforced and entrenched, this view of US equivocation, was the seemingly dilettante and consequently feckless attempts made, to restore matters to status quo ante.

The first initiative of any material substance was the foray of then UN Special Envoy to Haiti, Dante Caputo which urged the earnest deployment of human rights monitors to the country, to identify for perpetrators and victims, in the hope that such limited involvement would assuage US concerns thereby eliciting their concurrence to the UN's proposal.²²⁶However, if the UN was steeped in the sanguine hope that somehow the deployment of unarmed human rights monitors, would have the miracle effect of disarming the Haitian military and its militias from their repressive chores, then that was being wondrously gullible. For their part, the US also proposed the deployment of a five hundred troop strong contingent of international police to ease the situation, as if this was a run-of-the-mill law and order issue that was gripping Haiti, or that the presence of such a limited force

²²⁴Jean Bertrand Aristide, 'A Safe Harbour for Haiti; Aristide: How Clinton Should Help My Country', *Washington Post*, 10 January, 1993.

²²⁵Douglas Farah, 'Aristide Asks Haitians to Stay Home, Await His Return', *Washington Post*, 13 January, 1993.

²²⁶Though largely a UN initiative, the Clinton administration provided strong support and worked hard behind the scenes to persuade Aristide to write to the UN requesting such a mission.

could prohibitively deter a national army and its allied security units from either continuing to emasculate democracy and constitutional order within its sovereign confines or in perpetuating its reign of intimidation and fear amongst ordinary Haitians.²²⁷

Diplomatic parleys to forage for an amicable bloodless solution were going around in circles, through January to June 1993, as the proposal for Aristide to be ensconced back into his Presidency, but only on condition that he accord amnesty from prosecution to the Haitian generals met a plausible dead-end, since there wasn't enough of an incentive built-into the quid pro quo, for the protagonists to concur to an alteration of the status quo. Meanwhile, the OAS's embargo had been its customary anodyne and tepid self, and though the Haitian economy was verging on the precipice of precipice, it wasn't egregious enough yet, for the generals to realise their folly, duly capitulate, and readily return to the barracks. It was only in June 1993, that the Clinton administration spearheaded calls for imposition of a worldwide embargo upon the illegitimate Haitian regime, the militating vent of which was there for all to see, as the Haitian leadership opted for diplomatic negotiations, having noticed the strangulating effects of the on-setting global embargo, beckoning.²²⁸

If the enjoined policy interests of Washington, were an embodiment of idealistic persuasions under assertive multilateralism, then, the assignment and deployment of necessary resources to achieve these interests, was demonstrative of a temper, which sought to pursue these goals through an unassuming and passive demeanour, foreshadowed by the United Nations. The object of foregrounding the UN into prominence in attending to a situation that very much is encompassed within its broader mandate, is laudable, however, the fortunes of this diplomatic approach hinged on the delicate balance that the US would strike, between not being in your face proactive and yet not tuning out of the issue, altogether. If the earlier dimension were to prevail, it would constitute a leg-up for assertive multilateralism, however, if it came unstuck, it would be a body blow to the notions that the world can be a better and peaceful place to inhabit, without the US constantly watching over the world, besides calling into question, the US's role and contribution to peace and security.

In hindsight, this early approach of the Clinton administration to test the waters of the international community's resolve to step up to the plate of commitment, also undercut the

²²⁷Howard French, 'US to Push for a UN Police Force of 500 for Haiti', *New York Times*, 10 May, 1993.

²²⁸The agreement concluded between President Aristide and General Cedras, on 3rd July 1993, under the Governor's Island Accords, provided for the restoration of Aristide to the Haitian presidency by 30th October 1993, resignation of the military installed stooge regime, and a coordinated timetable for withdrawal by the military.

overall efficacy of international action. The US reticence to get its hands dirty was not lost on the Haitian military leadership, which led them to play ducks and drakes games with the international community. Hence, the diplomatic drift of what carried on through many months during 1993 was long drawn out parleys and confabulations, serpentine winding negotiations, but with no conclusive destination.²²⁹ The kid gloves approach of the international community driven by US passivity led General Cedras and his cohorts to reckon that the international community, the US included, lacked the appetite to go the whole hog in restoring democracy in Haiti, particularly if it meant that the vice like military grip on power had to be displaced by punitive force from the outside.²³⁰ If this wasn't enough, then doubts began to emerge from within the Clinton administration, over the President's genuine resolve to see this through in Haiti, i.e. ensuring the full return to Haitian democracy, without any ifs and buts. The United Nations diplomats too began to second guess the US administration, having clarified from the beginning that the UN was pursuing its mandate because of the backing from the US, and if the US was vacillating or wasn't fully committed to the mission, then it was fallacious to think that the UN could succeed in bringing the military leadership in Port au-Prince to their knees.

The fact remains that while Clinton had chosen to go down the multilateral path, it was hardly assertive in the main. Despite withering criticism of the administration's policy, from influential sections both within media and academia, Clinton was slow to get tough and exacting with the recalcitrant Haitian leadership. Even the suggested measures at the President's desk as of April 1993, for any or a combination of punitive actions, ranging from operating the embargo as a tight-ship, better targeted sanctions' imposition, rescinding of visas and enforcing stringent travel and over flight restrictions on commercial air traffic, etc., were mooted, their execution inexplicably dilated, for little rhyme or reason, until June 1993. This said, the hand wringing against Clinton's delaying tactics was vindicated, by the immediate impact that UNSC Resolution 841, adopted on 16th June 1993, had on the Haitian military echelons, in nudging them into an agreement with Aristide over a time-table for

²²⁹Colin Granderson, director of the UN/OAS Observer Mission, cited in Howard French, "Observers See Haiti Police Force as Brutal Obstacle to Democracy", *New York Times*, 24 May, 1993.

²³⁰A useful example of this practice is to found in the junta's approach, to the prospect of human rights monitors. The junta first agreed to Caputo's proposals, then acted against the agreement, before denying, ever having agreed in the first place. When Caputo returned to try to rectify the agreement, the junta came up with new conditions to be met, which the international community could hardly agree to. Eventually, the junta acquiesced to the monitors' presence, but only after further negotiation, and once the monitors arrived, they were not allowed to function properly. Similar patterns emerged, in respect of the offer of amnesty for the coup, and the acceptance of police monitors.

restoration of democracy in Haiti.²³¹In as much as the negotiated Governor's Island Agreement was seen as a high water mark for Clinton's assertive multilateralism narrative, in the words of Robert White, a member of President Aristide's negotiating team remarked on the inflection quality of US role, that was leading to the maiden occurrence of a sitting leader anywhere in the Western Hemisphere being returned to power after having been deposed, ostensibly through coercive international pressure, and little if any bloodletting.

Even as the Clinton administration and the international community gloated over the inking of the transition back to democracy agreement, misgivings remained over the precise manner of its implementation, and whether it would be scrupulous and seamless, all the way. Three distinct deficiencies were observed, which were suspected to play truant, going forward.²³² Firstly, that the embargo so imposed and which was widely presumed to have broken the back of the Haitian military's resolve to ensure in power was to be revoked prior to the hand-over of power to Aristide, almost suggestive of the fact that the onus of credibility and good behaviour was cast upon the international community, when it should have been entirely the burden of General Cedras and his deviant military cohorts. The actual threat that the lifting of sanctions would relieve the pressure off the generals was fair, although suspicions that, it would lead to defalcation of assets from the country, in a terse period of time, were quite overblown and exaggerated, to say the least. Secondly, the Governor's Island Agreement should have insisted upon an interim transition administration which would oversee the country's affairs in the interregnum between then and when Aristide returns to Haiti and is ushered in back into office. Instead, the accord left the military junta and its propped-up regime fully in place, during the interim period, which again was seen as casting the burden of proof on the international community rather than on the dishonest Haitian military, although the threat of the military influencing matters in the brief period on hand, was again more travesty than anything else. Lastly, beyond the threat of re-imposition of sanctions should the military renege on its iron-clad commitments, there seemed no other alternative mechanism instituted to tame and mellow the generals into submission or punitive measures to coerce them into full compliance of the agreement.

And these qualms were by no means unfounded, as the limitations began to rear their ugly head, as the time-table for transition through implementation of the terms of the

²³¹With international sanctions due to take effect on 23rd June 1993, a day earlier, General Cedras dashed off communication to UN Special Envoy Dante Caputo, notifying the latter, of his earnest willingness to participate productively and constructively in talks, towards an amicable resolution of the crisis.

²³² Kate Doyle, 'Hollow Diplomacy in Haiti', *World Policy Journal*, vol. 11, no. 1, 1994, pp. 53-54.

agreement wore on. No sooner had the embargo been lifted, commercial interchange was back in gusto, and was followed by a new wave of persecuting violence, besides the obstructionist attempts including death threats to legislators seeking to do their job and enact laws for the country.²³³Such was the degeneration in situation that any prospects for “a peaceful transition to constitutional rule”, looked remotely slim, a grudging acknowledgement from Clinton administration officials. As a consequence, the UN Security Council had to reconvene in all seriousness to deliberate back on Haiti, and this time instead of relapse back into a sanctions regime, it was determined that, a peacekeeping force, albeit lightly armed, would be mandated under Resolution 867 of 23rd September 1993, comprising units of civilian police to maintain law and order in the streets, military trainers and military construction battalions in pursuance of training the Haitian military would be deployed, however, they would be buffeted only with side arms and with no categorical mandate to intervene in violent disturbances. Just as the US was readying to put few hundred of its boots on the ground in Haiti, came nauseating news of the downing of an American helicopter by Somalian warlord Mohammad Farah Aidede’s men, that led to the death of eighteen American GIs, but also of their subsequent lynching in the streets of Mogadishu, which made the Pentagon trepid, of sending further lightly armed troops in harm’s way, in a fluid situation once again.

Finally, the US warship USS Harlan County was set to sail for Haiti on 9th October with two hundred fifty American soldiers on-board, amidst concerns for their safety and well-being, once ashore in Haiti.²³⁴The US Defence Secretary Les Aspin in an interview conveyed albeit erroneously that the troops on board the vessel were armed with M-16 rifles and sought to allay fears. However, this revelation, albeit mistaken caught Gen. Cedras’s goat and he decried the violation of the Governor’s Island agreement by the Americans, leading to a swarm of his supporters barricading the docking berth where the vessel was to come ashore.²³⁵ Recognizing the inability to persuade them or to overpower them, the USS Harlan County turned back for the US and this brought about a death-knell for the agreement and an escalation in the crisis.

²³³Howard French, “Many Disappear in Haitian Terror Campaign”, *New York Times*, 5 September, 1993; Michael Norton, “Aristide Supporter Slain during Mass in Haiti: Attack Marks Challenge to President’s Return”, *Washington Post*, 12 September, 1993.

²³⁴John Goshko and John Lancaster, “Despite Dispute, Troops Head to Haiti: White House Overrides Pentagon”, *Washington Post*, 9 October 1993.

²³⁵This demonstration had actually been planned for some time, and the CIA was reportedly both aware that, it was to happen, as well as having received reassurances that the demonstrators would not actually prevent the US troops from landing. Allegedly, this information was never passed on to the Clinton White House, lending some credence to the widely held belief that the United States’ foreign intelligence arm, possibly was privately opposed to the return of Aristide with skeletons on his watch, to Haiti.

FOREIGN POLICY IN RETREAT

The setback over Black Hawk Down and the Harlan County turn-back marked an important juncture in US foreign policy, and the idiographic discourse underway. If economic constraints were a check on American power projection during the early going in 1993, then the prospect of incurring political costs too, dawned on the Clinton White House, come October 1993, as a result of the unfortunate turn of events, in Mogadishu and off Port au-Prince. It forced a deeper rethink over the contours and trajectory of American involvement overseas, even as the sentiment for retrenching retreat, was hitting home. While no two events in international affairs are *sui generis*, and hence offer themselves to varied interpretations, it still triggered a reset of US foreign policy priorities, the pecking order selectivity of which was already under way since the advent of the Clinton Presidency.

The continuities and discontinuities inherent, in American foreign policy making and idiographic-thinking, can be observed, through an examination and analysis of the Presidential Review Directive 13 (PRD-13). The document from February 1993 was the crystallized and consolidated consummation on paper, of strategy sessions within the White House and the broader administration, over the suggested and recommended nature of US approach, to the once controversial but now epochal instrument of UN Peacekeeping. With Washington being the UN's most preponderant member in terms of military strength, economic resources, and diplomatic capital, an amalgam not found in such measure in any other sovereign-member of the premier global body. Hence, the relationship between the UN and the US is no ordinary relationship between member-states and its association, but is an equation that, holds great bearing on how politico-diplomatic, security, and socio-economic goals of the UN, shall be met or otherwise.

The thrust of the PRD-13 document has been on framing the nature of US's engagement with the UN's Department of Peacekeeping Operations (DPKO) as also with the institution of Security Council, which has principal responsibility for addressing issues of regional and global peace and security. While early thoughts girdled around an ambitious US role within UN Peacekeeping, sobering assessments have tempered enthusiasm since, leading to an understanding that the US should be deeply involved in UN PKOs only where it can commend a unique pioneering contribution to the qualitative improvement of the mission, and be limited to simply masterminding, arming and training of multinational troop contingents, where either direct US interests are not involved or where peer nations are able or willing to be involved in tending to the challenge. The Review further enjoins a strengthening through

capacity building of the profoundly understaffed and skeletally resourced UN's DPKO, including more resourceful ways of dynamic and real-time actionable intelligence sharing between each other. The PRD-13 reiterated that, the US would not place its troops under UN command, however, would be obliged to conform to the overarching UN operational strategy, whilst reserving and retaining for itself the right, to tactical autonomy and operational independence, in manoeuvre.²³⁶

This was the position in place until June 1993, when the top bosses at Foggy Bottom, the Pentagon, and out of Langley Virginia, had signed off on it, but the document in draft version, was yet to make its way to the Oval Office. Thereafter, conservative voices took over as the initial widely circulated proposal within the corridors of the UN, of a Standby Force for real-time deployment to tumultuous hotspots in quick time, which candidate Clinton had unequivocally backed on the campaign-trail, and which Defence Secretary Les Aspin had endorsed, during his confirmation hearing, was now being retraced.²³⁷ Furthermore, the Pentagon stepped-up pressure to have its way in the PRD-13, whereby US forces under UN Command would not be bound only by the UN's chain of command, but could work their way up the US chain of command operating concurrently during international peacekeeping missions, such that UN Commander's orders and directions could be disobeyed for grounds of their imprudence from a militaristic standpoint, or if they transgressed and transcended the original mission mandate, or if they constituted the commissioning of acts, judged, to be potentially illegal. What prompted this conservative pushback was the turn of events in Somalia, with twenty four Pakistani peacekeepers being killed by Farah Aideed's ambush on 5th June 1993, and the killing of four US military police on 8th August 1993, even as the US and UN forces were on a hot-leash chase, in pursuit for Aideed and his militia henchmen. With Italy declaring its intentions to withdraw from the UN mission to Somalia, criticising the behaviour of US troops under what it called were "Rambo Commanders" acting of their own accord, as if they were by themselves in the Wild West.²³⁸ Italian contention was that if the US could do things of their own volition, outside the bounds of UN mission mandates, then what is to cease other troop contributing contingents from doing likewise and what would then be the incentive left for countries to assign troops to serve under a UN Command, when a country or certain countries can enjoy unbridled operational privileges of their own?

²³⁶Jeffrey Smith and Julia Preston, 'United States Plans Wider Role in UN Peacekeeping', *Washington Post*, 18 June, 1993.

²³⁷Barton Gellman, 'Wider UN Police Role Supported', *Washington Post*, 5 August, 1993.

²³⁸Reuters, "Italian Minister Denounces 'Rambo' UN Commanders", *Washington Post*, 14 August, 1993.

PRD-13 which remained unsigned, through the unsavoury events of October 1993, was subsequently confronted by forces within the legislative wing of the US government, which subjected it to further review and scrutiny, the elaborate and elongated process of which endured well until May 1994, when it morphed in its nomenclature and came into the public domain as President Decision Directive 25 (PDD-25), enlisting strict criteria for US participation in UN peacekeeping operations, and devoid of the idealism latent in earlier draft versions.

MAINTAINING THE U.S.'s INTEREST IN HAITI

Since the set back of the USS Harlan County incident in October 1993, Washington appeared to lose interest in being the arbiter of the situation in Haiti. Although it explored the re-imposing of harsh sanctions and even instituting a blockade off Haiti, but it equally kept conveying the lack of any material interests that warranted its disproportionately large attention. The fizz had gone out of the Governor's Island agreement and despite the enterprise and initiative of the French, to be involved through proposing of a fresh Resolution, that would tighten the screws on Haiti through a stifling embargo, Washington preferred to wait on Caputo's briefing as to the latest round of his diplomatic negotiations with the Haitian military.²³⁹ Thereafter, Washington expressed its preference for targeted sanctions over a stiffened embargo, and declared that it intended no new measures to force the Haitian general out but would instead wait to let sanctions take their cumulative effect and force the military out of power.²⁴⁰ This was seen as a major climb down by Washington, having committed all along, to do all that it takes to restore democracy in Haiti, and even glowering at the Haitian puppet regime and its military backers, warning them off serious consequences, should they trammel a settlement. This is reflective of a situation, where the rhetorical interests to the cause remained consistent; however, with the mutated idiographic context on hand such interests had to be framed differently.

The first and most obvious of these shifts in the context of interests was the rationale forwarded for the abandonment of the idea of a tougher sanctions regime. While in early 1993, Washington identified with the need for restoration of democracy, as being imperative to alleviating the humanitarian distress festering in Haiti, and to ensure the generic protection of human rights and fundamental freedoms, of all Haitians, without fear or favour. Now,

²³⁹Reuters, 'UN Presses Haiti Army to Comply', *Washington Post*, 31 October, 1993.

²⁴⁰Thomas Lippman, 'US Relaxes Its Drive For Haitian Democracy: No Humanitarian Problems Seen Imminent', *Washington Post*, 17 November, 1993.

come November 1993 and Washington was singing a different tune, no longer making human rights the principal reason for imposition of sanctions but instead making it the reason for non-imposition of stringent sanctions, aimed at modifying the fundamental behaviour of the Cedras regime. Clinton advocated for this startling change by arguing that the cost of action in terms of sanctions outweighed the benefits of inaction, given that imposition of stringent sanctions would saddle the helpless and despairing Haitian people, with unmitigated hardship and suffering.²⁴¹ State Department officials, picking up on the Presidential cue, went on record to assert that, humanitarian relief organizations and volunteer groups had sufficient quantities of food and essential supplies stacked-up to last them many more months, thereby implying to be washing their hands off the aggravated humanitarian plight of ordinary and innocent Haitians. This change in tone and stance is indicative of a change in the United States' ideographical commitment, since neither the interests had in themselves changed nor had the circumstances altered in any respect. If sanctions were the order of the day for marooned Haitians back in June 1993, then they could not be bad for Haitians already condemned in profound privations, in November of 1993.

It may be considered that from the get-go, US interests in Haiti to the extent of rolling up their sleeves and getting dirty were not impelled by the singular facet of overwhelming concern for human rights of Haitians, as smaller narrower concerns too did exist, but flew under the radar. And nowhere is this casuistry about the US's purposive argumentation, better exemplified, than, on the question of democracy and democratization. Since here the US could not possibly have argued that an interest in keeping incipient democracy in Haiti alive and well is best served through gross and glaring inaction, hence, Washington saw it fit to gradually but discernibly distance itself from Aristide, who due to his own not so salutary background and baggage of issues back home, got conveniently typecast as undemocratic, though elected democratically to the office of President of his country. After all, Aristide was no angel, despite his background of priesthood. He had not necessarily endeared himself to various constituencies in Washington, his background of some kind of a populist with socialist leanings and authoritarian moorings had led him to indulge in anti-democratic practices during his succinct tenure including expropriation of opponents from due political process, inciting mob unrest and even ordering political assassinations.²⁴² The CIA had

²⁴¹Howard French, 'Study Says Haiti Sanctions Kill Up to 1,000 Children a Month', *New York Times*, 9 November, 1993.

²⁴²Lally Weymouth, 'Haiti's Suspect Saviour: Why President Aristide's Return from Exile May Not Be Good News', *Washington Post*, 24 January, 1993.

commended an in-camera briefing to Congressional leaders on the psychological composition and conditioning of Aristide and his skull-duggery back home, which had led Sen. Jesse Helms (R-NC), to characterize him as a “psychopath.”²⁴³

However, it could not be taken from him, that for all his acts of omission and commission, he was the legitimate ruler of his country, elected in a free and fair election, certified by the international community monitors as also those from the OAS, as such, with a handsome 70% popular vote. And while Aristide may not be the perfect individual to be spearheading his tiny beleaguered nation, democracy is after all about lesser imperfections, hence, it’s less about securing the future of Aristide, but more about preserving and nurturing the young democracy, that Haiti had dreamt of becoming, that was moot here, that too in a Western Hemisphere, where democratic restorations and transitions have been belabouring to say the least. Having declared strong support for him since helming the Presidency, it was difficult for Clinton to shake Aristide off, much less be seen to be cynically throwing him under the bus, so-to-speak. Hence, he continued to publically back him, although the fact of the furtive CIA briefing to House Members and Senators on Capitol Hill evokes intrigue as to whether Clinton was running with the hare and yet hunting with the hound.

As Clinton administration officials were less than salutary in addressing Aristide going forward, the deposed President chose to give his burying of the hatchet with Washington, one last try.²⁴⁴ He sought to convince the Clinton White House that, should they return him to power and restore normalcy in Haiti, then he would be willing to do their bidding, and facilitate US interests in Haiti and through the wider Caribbean. However, when the tacit quid pro quo did not seem either to be holding or to be yielding fruit, Aristide gave himself greater latitude, in scorning the United States in public. He chose to take on the US on refugee policy, by describing the 1981 US-Haiti Treaty on interdiction and repatriation of refugees as a “floating Berlin Wall” which was an infraction of international law, and even threatened to pull the plug on the treaty, unilaterally.²⁴⁵ It got under America’s skin, it exposed the soft underbelly not just of duplicitous US policy on refugees and rhetorical concern for them, but it also became a lightning rod within US politics as many members of the African American community, particularly those within Congress seconded Aristide in terming the 1981 treaty and its provisions as “absolutely morally untenable” and a “flagrant

²⁴³Jeffrey Smith and John Goshko, ‘CIA’s Aristide Profile Spurs Hill Concern’, *Washington Post*, 22 October, 1993.

²⁴⁴Steven Holmes, ‘US Disenchantment with Aristide Growing’, *New York Times*, 18 December, 1993.

²⁴⁵John Goshko, ‘Aristide Assails US Refugee Policy: Deposed Haitian Leader Ends Agreement Not to Criticize Clinton’, *Washington Post*, 9 February, 1994.

abandonment of every tenet of decency and justice.”²⁴⁶ By April 1994, the carping critique of US’s allegedly inhumane refugee policy, was portrayed as the unacceptable singling out segregation of pitiful Haitians, a line of argument that made sense, given the laundry list of refugees who have made it to US shores and have in due course been accepted and integrated within US society, viz., the Cubans and other Latinos from Central American nations.

FOREIGN POLICY ROLE – A LEADERSHIP BATTLE

The US debacles in Somalia, Haiti and to an extent in Rwanda, met with recompense in the form of a transition from muscular multilateralism to beating the proverbial retreat. Moot in this consideration is the discussion on the role of the United States in world affairs. There is domestic consensus across the political divide and across influential sections within American society, that the US must not abdicate its position at the apogee of national power and incontrovertible pre-eminence in international affairs. However, as the US grapples with understanding and responding to lower tier conflicts, its preponderance at least stands assailed, if not jeopardized. Its ironical that none of Somalia or Haiti or for that matter even Kosovo and Northern Iraq, did not directly threaten US national interests, yet, taken together, in terms of the vagaries and vicissitudes of American involvement in these hotspot theatres, they have made an emphatic statement which is not necessarily salutary. And what is damning is not so much the sheen taken off the power and prestige of a powerful nation, by intermittent military setbacks, which is par for the terrain across the sweep of world history, but the shuddering reaction to these reversals within American society, that betrayed deep seated frailties and more. While the reflexive reaction of insularity, after reverses, is understandable, at one level, it begs the question that, how can a nation that harbours such searing casualty aversion, genuinely aspire to enduring greatness and predominance? A foreign policy calculus that refuses to accept and account for casualties, in the course of destiny, is condemned to erode itself, of credence.

Gone are the days and epochs when great powers seldom needed to engage in actual combat, as an effective posturing of intimidation, often did the trick. Nor did powers of yore curate their military indulgences, such that, they were only to be deployed in instances of existential threats. Great powers of modern and contemporary times have to be able to coexist with locales and environs of malevolent disorder, pervasive anarchy, and systematized and rampant virulence, and prevail over them. Although Clinton took the flak for equivocation in foreign policy identity and interests formulation, at a larger level, idealism was dented by the

²⁴⁶US House of Representatives, ‘Restore Democracy in Haiti’, *Congressional Record*, 1 February, 1994, E55.

events in Mogadishu and Port au-Prince. It has brought home the realisation that a coherent foreign policy is pivotal, to deal with the subversive tendencies that are pervasive and lurking all around. In the wake of the setbacks, American idealism has not reverted back to assertive multilateralism, but has evolutionarily embraced what may veritably be called 'pragmatic idealism.' Under the guise of assertive multilateralism, it was felt that Washington could accomplish through the auspices of the United Nations, cherry-picked engagement with the world, on the relative cheap, which on the evidence of the fraught compacts in Somalia and Haiti, is neither tenable nor sustainable. With the unveiling of PDD-25, the United States was declaring to the world that while it would no longer avail of the façade of multilateralism to shirk responsibility, it would similarly not balk or cringe at the thought of fording its way abroad in defence of its core values and pursuit of what it comes to define as its fundamental national interests.

IN WITH THE OLD AND OUT WITH THE NEW!

Since the middle of 1994, consensus within the US executive establishment, skewed in favour of the urgent need for a mutated Haiti strategy. If the tin-pot Haitian military leadership and its Machiavellian machinations were allowed to stand, even worse prevail, then not only would it constitute an affront to the world's sole superpower so close to home, but would incentivize such kinds of devious actions, on the part of authoritarian forces of similar turpitude, without any comeuppance. As the Clinton administration got down to fashioning a comprehensively new strategy on Haiti, of course the elements of which, when placed in the public domain, proved to be not all that new in final analysis, the fraught proposition with which the Clinton White House wrestled was how to engineer the dislodgement of the Haitian military leadership without heaping more onerous humanitarian affliction upon the hapless Haitian demography.²⁴⁷ At the heart of Washington's new gambit on Haiti, was a return to the UN in demanding for a blanket trade embargo, which found consummation vide UNSC Resolution 917 of 6th May 1994, adopted under Chapter VII framework, which implies enforcement action of coercive hue.²⁴⁸ The Resolution was incisive in that it stipulated the freezing of funds of the echelon members of the junta and their immediate kith and kin, besides the instituting of severe travel restrictions upon them and the earnest revocation of their visas, demands which were made of the US back in September

²⁴⁷Douglas Farah, 'Aristide's Backers: Latest Plan Falls Short', *Washington Post*, 2 May, 1994.

²⁴⁸Paul Lewis, 'UN Council Votes Tougher Embargo on Haitian Trade', *New York Times*, 7 May, 1994. The Clinton administration also continued to bolster the sanctions regime with additional targeted measures as the summer progressed, though it was criticised for doing so in a sequential and seemingly ad hoc manner, which reinforced the sense of an under-considered policy.

1993, but which Washington considered for a while, before dissing it. Also going in tandem, within such a changed strategy by the US, was a commitment to operationalize reforms within its Haiti-specific refugees' policy, wherein, those intercepted on high seas would now be subject to asylum request screening protocols, rather than simply be summarily returned back to their country.²⁴⁹

The sanctions newly imposed, were meant to turn the screws on the Haitian leadership, and their benefactor acolytes, associates, lackeys and factotums. However, the problem of ensuring optimum adherence for sanctions and laser like targeting of them continued undiminished. For starters, Haitian secretive trade across its border, into the Dominican Republic, was proving to be an enduring lifeline, to the Haitian regime in power, reinforced further by Dominican Republic President Joaquin Balaguer's propensity to shrug off execution of the sanctions regime, in support of the powers-that-be, in Port au-Prince. Not only did oil and merchandise travel back and forth across the Dominican Republic-Haitian border in interchange, but, the revenue stream being generated on a regular basis, from illicit trade, in such and other varieties of contraband goods, also remained steady and unhindered across the anyways porous frontier.²⁵⁰ Notwithstanding the continued enriching of the Haitian military top-brass despite sanctions, neither was the sojourn restrictions upon Haitian bigwigs, going to register more than a dent in their needs, beyond the situational inconvenience caused for the ostentatious small sliver of elites, in terms of the location of their shopping binge, which made Western Europe their alternative port of call for a while.²⁵¹ And as for the seizure and confiscation of financial assets of the Haitian military and their financial backers, the time that had elapsed since the collapse of the Governor's Island Agreement back in October 1993 up until the middle of 1994, had allowed sufficient time, for diversifying the portfolio of such fiduciary instruments, away from US banks and financial institutions.²⁵²

What was at stake also, was American credibility of pronouncements and action, and whether having suffered much ignominy in a sputtering response to Haitian military's putsch on democracy in the country, President Clinton was revved-up in walking the talk this time around. The Haitian military was convinced that Washington's resolve would fray once again as sanctions would exacerbate the already miserable condition of ordinary Haitians rendering

²⁴⁹White House, 'Fact Sheet on Haitian Policy', 8 May 1994.

²⁵⁰Ann Devroy and Daniel Williams, 'Best Time to Invade Haiti Is Weeks Away, Aides Say: Clinton Must Decide Among Several Options', *Washington Post*, 5 August, 1994.

²⁵¹Air France, the last carrier to maintain commercial flights out of Port-au-Prince, suspended its flights on 31 July, 1994.

²⁵²Despite being questioned repeatedly and at length on this question, the Clinton administration never came up with firm figures as to the monetary value of the assets freezes.

them horrifying. Besides, the sense that General Cedras harboured was that, as Haitians would steadily stream into Florida after the US government's decision to loosen the strings on its refugee policy, the US and the international community would be deterred, from pressing on with sanctions interminably.²⁵³ It was anyone's guess as to which way the cookie would crumble on the issue of the efficacy of this latest round of sanctions vis-à-vis the Haitian military leadership.

THE LAST RESORT

All along the ebb and flow of the Haitian crisis, the medley of problems and their identification was relatively facile, yet, effective and tangible solutions constantly eluded. There was considered view gaining currency within the Clinton administration's ranks that a short sharp ground invasion involving up to some seven thousand boots on ground, would suffice, in hurtling the Haitian regime over the cliff; however, would the American electorate on the back of gut-wrenching and stomach churning scenes of US soldiers being subjected to degrading and dehumanizing treatment in Somalia, support such a mission, albeit closer to home and hence more amenable to being minutely tracked for optimal results? And what if the succinct invasion ends up in some form of protracted occupation? This said, the alternatives even if they existed, were nowhere promising either, whether it was the counsel to stay the course with sanctions in a wait and watch mode or the advice that came from Former President Bush and fellow Republican strategists who argued for snapping of all ties to deposed President Aristide, and persuasion of the Haitian military, to convene fresh elections in the country.²⁵⁴ While the fact of Aristide being a polarizing figure and possibly an impediment to breakthrough in negotiations was accepted, however, how could the US turn its backs on a leader who had received resounding popular affirmation in a free, fair and

²⁵³As sanctions began to bite, a new wave of Haitian refugees, headed for the seas. By July, the levels had reached around eight hundred to one thousand a day, far more than the ad-hoc refugee processing procedures could cope with, even as the United States struggled to find third countries, willing to take in some of this massive inflow, teeming in. This effort was largely unsuccessful. An agreement with Panama, to house up to ten thousand refugees, fell through in early July, in the face of Panamanian domestic opposition, leaving only the United States, with an agreement to anchor refugee processing vessels offshore in Jamaican territorial waters, and an agreement with the Turks and Caicos Islands to allow for a processing centre on-shore. The United States continued its search through July and August, but met with little success.

²⁵⁴On 11 May, 1994, General Cedras had already appointed 80-year-old Supreme Court Justice and long-time supporter of the regime, Emile Jonassaint, to the post of 'Interim President', and this figure was a possible junta-supported candidate, in any new elections. Shortly thereafter, on 16 May, Jonassaint passed a presidential decree, awarding himself the post of Prime Minister too, hardly the work of a true-blue democrat. Moreover, the idea of new elections was one favoured by the military regime itself, which began organising for new elections in July. It was likewise suggested that, Cedras could have been another possible candidate for President. In this context, one could hardly expect fresh elections, to rectify Haiti's democratic deficit.

legitimate exercise in electoral franchise, without sullyng its own reputational integrity, to its newly recast neoliberal idiographic identity?

An alternative to this course of action lay, in exploring the suggestion of the island of Île de la Gonâve, a sparsely inhabited island off the coast of Haiti, being instrumentalized as a potential lodging place for Haitian refugees, streaming in scores to the US. As the thought went, Aristide could be nudged into making this island his stationing base and leaving it to him to plot his return back to Haiti. This way the predicament of dealing with voluminous numbers of Haitian refugees would be eschewed, and the albatross around Washington's neck, viz., Aristide and his cause of being returned to his country, would be off the US's backs. With the proposed island being closer to Haiti, it was considered to be less of a treacherous patch to traverse, besides, the US could monitor from afar, developments on and off the island. Of course, the down side to this idea was the fact that, a small contingent of the Haitian military was already stationed upon the island, hence, claiming it for the fleeing Haitians and their leader Aristide, would involve an operation, at Haitian military displacement, that always carried told and untold costs. Besides, selling the proposition to Aristide and his team was going to be formidable, as they were bound to view this proposal through the prism of the erstwhile failed Bay of Pigs invasion, and conclude it to be a case of the Clinton administration, endeavouring to wash its hands off this yeomen mission. And above all, it would run counter to the idiographic concerns surrounding sustenance of American regional leadership, which would be seen to be undermined with this step.

Hence, the choices confronting the United States in Haiti distils down to three stark options, viz., to abrogate sanctions in concession; to hold steady and risk the prospect of accentuated suffering of the Haitians; or to bite the bullet and take the bull by the horns, through an all-out invasion.²⁵⁵An invasion would contradict sentiments that counsel for America to sit on the side-lines of virulent conflicts in far flung or nondescript places, even as the invasion, should it go pear shaped, would risk the credibility of the US military machine but also carry pyrrhic domestic political costs for President Clinton, coming quick on the heels of transpiring in Somalia. However, with Aristide turning the newest convert to an apologist for US-led intervention, the stridency with which the Clinton administration disabused notions of militaristic involvement in the past, was no longer prevalent, although the enamour for it wasn't there.²⁵⁶The best of both worlds seemed one, where the Haitian

²⁵⁵Thomas Carothers, "The Making of a Fiasco", *New York Times*, 12 May, 1994.

²⁵⁶Howard French, "Doubting Sanctions, Aristide Urges US Action on Haiti", *New York Times*, 3 June, 1994.

military simply wilts against the coercive threat of US's strategic use of force, thereby avoiding the need for intervention itself, but the Haitian generals were far from cowed down, by the war-mongering crescendo building.²⁵⁷ It's only the actual imagery of frontline US naval warships, fording their way across the Caribbean Sea, that had the Haitian military and it's propped up regime deciphering, that their bluff had been called and the game was up.

The Clinton administration weathered an uphill task in persuading a deeply sceptical and apprehensive American electorate, coupled with the fact that opposition also emanated from certain influential sections within US policy-making. The formidable brick wall emerged in the form of the US Congress, where no less than double digit Resolutions were introduced during May to September 1994, seeking to either forestall any military intervention in Haiti, or at least circumscribe the contours and scope of the prospective operation, but to no real avail.²⁵⁸ The opponents to military invasion in Haiti, held up the mirror to the Clinton administration, on its own test-criterion for such interventions, enlisted in the Presidential Decision Directive (PDD-25), where US intervention qualified in cases which constituted a substantive national interest. Crucial litmus tests would be whether restoration of democracy and amelioration in the humanitarian situation of common Haitians represented a national interest to the United States' neo-liberal agenda, and whether the US could expect the UN to assume stewardship of the post-intervention nation-building exercise, through a smooth handover, unlike the collaborative but incoherent botched-up operation, in Somalia.²⁵⁹ There is no gainsaying the subjectivity inherent in determination of cases in the context of their substantive or existentiality to national interest, and even whether Haiti on account of its democracy-deficit and humanitarian morass, was eligible to meet such a threshold.

It ought to be recalled that, the initiation of militarized intervention in Haiti, was not an exercise of turning on the switch. The intervention had been contemplated, deliberated upon, and elaborately considered, across all dimensions of pitfalls, for a full five months leading into it. The UNSC Resolution 940, authorizing such intervention, was approved a full six weeks prior to the actual onset of operations, and envisaged a two-staged mission, where

²⁵⁷The New York Times columnist William Safire described Clinton's threat of force as "the most nail-nibbling, pusillanimous 'threat' ever uttered by a President of the United States: 'we are doing our best to avoid dealing with the military option'".

²⁵⁸The only amendment that passed, was the Mitchell (and Others) Amendment of 29th June 1994, a 'Sense of the Senate' Resolution (non-binding), which asked of the President, to seek Congressional approval before authorising an invasion of Haiti, a formulation that passed on an overwhelming 93:4 margin.

²⁵⁹The US House of Representatives, "Possible United States Invasion of Haiti", *Congressional Record*, 12 September, 1994, H9082.

the US would impose itself on the ground, with the full weight of force brought to bear, in pursuance of pacification and stabilization, thereafter yielding to the United Nations, to duly execute the subsequent nation-building responsibilities. Washington exhausted every possible sinew over the summer coaxing potential allies to bandwagon.²⁶⁰ However, President Clinton stopped short of approaching Congress in seeking prior authorization; of course the ‘Sense of the House’ Resolution, did not in any way oblige him to do so. Clinton was apprehensive of the Congress using the instrumentality to tie him down politically and operationally, hence choose to go over their heads and address the American people directly.²⁶¹ Laying out his case, Clinton acknowledged that, it was not the US’s intention to assume the role of the world’s policeman, much less to commit valuable pecuniary resources and material troops in harm’s way in far off hotspots. He sought to assure people that the mission would be limited and specific in objectives, and had to be undertaken to uphold the sanctity of commitments made by the US. While assuaging popular sensitivities, the Presidential address marked an entreaty to US identity as had been articulated since his ascent to national helm-ship in January 1993. Besides, it also embodied injunctions, as to the fiduciary tab, strategic objectives and potential pitfalls, latent in the undertaking of wholly arbitrary and utterly discretionary militarized interventions. With US leadership on test, the address to the nation, sought to project the imperative for the proposed intervention, in terms of preserving and sustaining the credibility of American power. Lastly, but by no means the least, the Oval Office address aimed at establishing the mystical allure of the ideals of American democracy, through making a case for an abiding ardent commitment, to democracy and human rights. Simply put, all of this required the intervention.

Unlike the Somalia case for humanitarian intervention, where the dichotomous duality of universalism and particularism strains in identity were dominant in interplay, such that the configuration of identities was relatively evident, and despite contention, a unitary identity was incandescent, in establishing the causal connection to events, the Haiti case in contrast, was replete, in its complexity and nuance. Here a much more convoluted idiographic realm was at work, in which the articulation and attendant contestation was up in the air, till the last stretch. Elements of solidarist universalism and nationalist particularism were alternating, in oscillating action. If universalism dominated the scene during the early going, a distinct streak of particularism came into vogue, as matters wore on. However, by the time the final act was

²⁶⁰John Goshko, ‘US Asks Allies to Pledge Troops for Haiti’, *Washington Post*, 8 June, 1994.

²⁶¹Indeed, in the aftermath of the invasion, and the success of the Carter-Powell mission that persuaded the Haitian regime to step down without a fight, assessments of the policy were generally favourable.

being played out in terms of the US's decisive push for intervention, amidst conditions of a balanced idiography, universalism once again shone through. What this sequential alternation reflects is that contrary to conventional wisdom that views universalism and particularism as juxtapositions on an axis, the ideal conception views and perceives them as a veritable continuum. Notwithstanding, the phenomenon of critical junctures, is also more pronounced out here, with black swan events in the routine course of things seemingly impinging on the trajectory of causative linkages, though the importance accorded to causative links, also underscores the need for discerning process, to identify them as such.

PROSECUTING THE VERITABLE 'HUMANITARIAN WAR' – THE U.S. INTERVENTION IN KOSOVO

Since time immemorial, harking back to the antiquated times of ancient Greece and Rome, through the eras of the Byzantine and Ottoman fiefdoms, and across the twin World Wars, the Balkans has stood at the intersection of labyrinthine international conflict. In what have been frequent concerted attempts, during different junctures in world history, to effect changes in demographic profile and composition, so as to bring them in puritanical conformity with the geographical dimensions of a state, the Kosovo situation could be described, as one of the more recent instances of enduring incidence. Overwhelming home to native Kosovars who hail of Albanian descent, they reside in the province which the Serbs regard as their hallowed spiritual turf. As conflict raged through much of the 20th century, but was kept under wraps due to the tight-ship control of Marshall Josp Broz Tito, Serb nationalism rose to the fore once again, upon his demise, and the ascent to power of successor Slobodan Milosevic. As his incendiary speech of 1989 calling for the liberation of Serbian lands within the Federal Republic of Yugoslavia from Muslims in particular, he commenced a systematic policy of disenfranchising non-Serbs in the multi-cultural and multi-ethnic nation within South East Europe. The Kosovars in return, organized themselves both politically and militarily, in a bid to administer their affairs within a self-proclaimed Republic and provincial Assembly in response to the Serbian abolition of its inveterately held autonomy, and yet also be prepared to take up cudgels against the mighty Serbian state and its military machine, through armed resistance and struggle.²⁶²

However, as ethno-nationalism spread to other parts within the Federal Republic of Yugoslavia, the Serbian hostilities with the Bosniak Muslims in Bosnia Herzegovina, and the

²⁶²United States Agency for International Development (USAID) 'Strategy for Kosovo 2001-2003,' Available from <http://www.usaid.gov/missions/kosovo/kosstat.htm>, (Accessed on 15 November 2019).

Roman Catholic Croats in Croatia, focussed the world's attention onto this conflict that wore on until its conclusion vide the Dayton Peace Accords signed in Ohio, US, by all the warring parties. During this period until 1995, Kosovo and its grievances were obscured from the scene. But the embers of the conflict did not take long to seep back into Kosovo, as Kosovo Liberation Army reprisals in 1996, against constant Serbian forces attacks against them, however, it wasn't until the massive Serbian putsch against the Kosovars that culminated in the massacre of eighty individuals in the town of Drenica, that pivoted attention of the international community, back to this long festering wound, in early 1998.²⁶³

Deeply apprehensive of the fact that this latest episode of hostilities could metastasize into the precursor Bosnia like atrocity, made the UN, NATO and the European convene in earnest through the medium and mechanism of the Six-Nation Contact Group on the Balkans. With hundreds of thousands of innocent Kosovars caught in the crosshairs of conflict, massing themselves on the border with Greece and Albania, making beseeching entreaties to let them into those countries, the Contact Group (US, Russia, UK, France, Germany and Italy) called for an urgent cessation to hostilities, the return of refugees, and unfettered access for humanitarian relief agencies, to dispense succour and sustenance to the marooned populace. By March 1998, the UN Security Council found itself seized of the matter, and passing UNSC Resolution 1160, which unequivocally denounced the "excessive use of force by the Serbian police against Kosovar civilians."²⁶⁴ Notwithstanding, UNSCR 1160 also imposed an immediate arms embargo upon the decidedly stronger entity in the conflict, the Serbs, and called for a solution that would accord autonomy to the Kosovars in Kosovo, but within the overall sovereignty and territorial integrity of the Serbian state.

Despite the UN Resolution, the fighting continued unabated all the way through September 1998, with even the intimidating posture of Operation 'Determined Falcon', a slew of air exercises commissioned by NATO, to act as a strong deterrent to the Serbian forces, being to no avail. Come 23rd September and the UN Security Council adopted UNSCR 1199, this time under its Chapter VII framework that was to integrally carry the real threat of coercive enforcement action. Building on the earlier Resolution that sought to restrain the ability of the Serbian state to procure weapons, this Resolution categorically designated that "the deterioration of the situation in Kosovo, constitutes a threat to peace and security, in the region." Besides, the Resolution clearly put President Milosevic and the Serbian state on

²⁶³Ivo Daalder and Michael O'Hanlon, *Winning Ugly: NATO's War to Save Kosovo* (Washington, D.C.: Brookings Institution Press, 2000), pp. 229-230.

²⁶⁴United Nations Security Council Resolution 1160, New York, United Nations, 1998.

notice, clarifying that any non-implementation of the demands put forth by the Contact Group would constitute non-compliance with UNSCR 1199, thereby compelling the UN Security Council to “consider further action and additional measures, to maintain and restore peace and stability, in the region.”²⁶⁵ This was matched by NATO’s own actions, at gearing up its military preparedness, in a bid to demonstrably convey, the seriousness of its political resolve. By this time, the US was commencing its dual strategy of dishing out an ultimatum which was done by President Clinton giving President Milosevic a fortnight to come into scrupulous adherence of obligations imposed upon him under the terms of UNSC Resolution 1199 and the Contact Group, even as Ambassador Richard Holbrooke was dispatched to Belgrade for extended discussions, aimed at persuading the Serb leader, to overcome folly and see reason. Even as Holbrooke was seen to have extracted some concessions from the Serb strongman which could be viewed constructively, it was also known that NATO had scaled up its preparedness, escalating it through activation of ACTORDS, which empowered the Supreme Allied Commander within Europe (SACEUR), to initiate limited military strikes against Serb targets, imminent within days, but which were suspended, after the Holbrooke-Milosevic talks.²⁶⁶

With the massacre in Raçak, that killed forty-five Kosovars on 15th January 1999, the conflict escalated once again, with the Organization for Security and Cooperation in Europe’s (OSCE) Kosovo Verification Mission terming the action as unconscionable abhorrence and pinning culpable responsibility upon the Serb government forces.²⁶⁷ By the end of the month, the Contact Group has assembled again and announced a draft framework agreement which would be subjected to the protagonists in the conflict, during structured negotiations to be conducted in Rambouillet, France. In twin legs of talks in Rambouillet and Paris, the Kosovars accepted the terms of the suggested agreement, whilst the Serbs presented an alternative draft version, acceptable to them, but which was declared untenable by the Contact Group, thereby leading to an impasse-breakdown in negotiations. Upon the failure to secure any meaningful breakthrough in a fresh round of Holbrooke-Milosevic meetings, mandate seemed to roll-over to NATO headquarters in Brussels, with ensuing authorization of air strikes against Serb targets, which commenced on 24th March 1999.²⁶⁸

²⁶⁵United Nations Security Council Resolution 1199, New York, United Nations, 1998.

²⁶⁶Lester H. Brune, *The United States & the Balkan Crisis, 1990-2005: Conflict in Bosnia & Kosovo*, (Claremont, C.A.: Regina Books, 2005), p. 90.

²⁶⁷Alex Bellamy, *Kosovo and International Society*, (Houndmills, U.K.: Palgrave, 2002), pp. 115-116.

²⁶⁸Andrew L. Stigler, “Kosovo,” in Shawn W. Burns (ed.), *Case Studies in Policy Making & Process*, (Newport, RI: National Security Decision Making Department, Naval War College, 2005), p.132.

With the US being the nation at the zenith of its power during what was understood to be an unipolar moment in world history, it was no turn up for the books to witness Washington enjoy primacy in transpiring concerning Kosovo and Serbia, even though this theatre of conflict was situated within Europe and ordinarily should also have been used to test the European ability to render and sustain their backyard halcyon, without the need for ingress from the extant. The US has been the dominant entity within NATO, both politically and operationally, in terms of its financial underwriting of the organization, as also its contribution, in terms of the cutting-edge militaristic preparedness, at the disposal of Brussels. Besides, despite the US having been constantly criticised in many quarters for disposing belatedly in the Yugoslavia Civil War, it remains an incontrovertible fact that, if not for US diplomatic involvement, there was to be no Dayton Peace Accords and possibly many more months and years of savage bloodletting. Furthermore, if the United Nations has to be galvanized into tangible action, it can seldom transpire, without the marked politico-diplomatic and security apparatus support proffered by the US, hence, it's hardly a surprise, when the Secretariat in New York, often casts its gaze out at Washington, to suss for pointers, as to the latter's predisposition or otherwise, towards a specific challenging dossier of sub-national, asymmetric, low-intensity conflict.

The night of the NATO air blitz over Serbia, President Clinton went to the nation, in a prime time televised address. The endeavour was to square-up with the American people over the rationale and imperative for undertaking the military action that the transatlantic alliance had commenced.²⁶⁹ Clinton pointed to the unprovoked Serbian ambush of innocent Kosovars through tank and artillery fire, even after their leadership had concurred to a peace plan, which was as cowardly and knavish as it gets. Besides, the lessons of sitting out the first Balkans War that led to the break-up of the former Yugoslavia, had to be gleaned, internalized and learnt from, viz., that gross inaction and inertia in the face of brutish machinations, simply invites and heaps upon, more such debased and demented acts, which could not be allowed to stand.²⁷⁰ Besides, Clinton did evoke the pragmatist realism argument too in justification of US-led NATO air raids on Serbia, casting it as much as an act of strategic national interest, as it was a moral imperative, by arguing that Washington's spearheading of the military campaign, was to pertinaciously preserve and redoubtably sustain, a free,

²⁶⁹“Address to the Nation on Airstrikes against Serbian Targets in the Federal Republic of Yugoslavia (Serbia and Montenegro) March 24, 1999,” Public Papers of the Presidents of the United States: William J. Clinton 1999, United States, Office of the Federal Register, National Archives and Records Administration, <http://www.gpoaccess.gov/pubpapers/index.html>.

²⁷⁰Ibid.

undivided, secure and prosperous Europe, that was integral to America's security and prosperity.²⁷¹ Since Balkans was a historic powder keg that has flared-up from time to time, the ethno-nationalist ambers, oxygenating such atavistic virulence, had to be doused for good. He made the point that empirical evidence has manifest that if conflicts are intervened in at the requisite juncture, then they fester and metastasize into wider conflicts, thereby eliciting an involvement on a larger financial and material tab, not to mention that doing nothing was an option, hugely discrediting for NATO, and its stature and prestige as a pioneering collective defence alliance.²⁷²

FACTORS / STAKEHOLDERS' INFLUENCING THE KOSOVO INTERVENTION

The multitude of ideological factors, are believed to have impelled and spurred the Clinton administration, to conduct an intervention over Kosovo; prime among them being the article of faith belief in regional alliances and time honoured and time tested security systems, over a reliance on the multilateralism through the United Nations, which had endured its fair share of chequered travails. Though UN driven multilateral processes were often reposed faith in rhetorical terms, the Clinton administration seldom premised their calculations and considerations on how the UN process would shape-up, as time and again, the convolute character of practice over principle, would register its sobering and chastening realisation, most notably across multilateral peace operations, where Washington's latitude for unilateralist manoeuvre was invariably pruned to its perceived detriment, such that Secretary of State Albright had oft-quipped the phrase of "multilateralism where we can, unilateralism where we must."²⁷³ Despite the US administration's protestations that the Kosovo intervention marked a commitment to the enmeshing of national values and realm of strategic interests, the skew in favour of realism over heady idealism, was self-evident.²⁷⁴

No wonder then that former President Jimmy Carter, the last liberal democrat to occupy the exalted office before Clinton, remarked in a 1999 New York Times op-ed piece that, "the approach the U.S. has taken recently, has been to devise a solution, that best suits its own purposes, recruit at least tacit support, in whichever forum it can best influence, provide

²⁷¹Damian Carr, *Military Intervention during the Clinton Administration: A Critical Comparison*, USAWC Strategy Research Project, (Carlisle Barracks, P.A.: U.S. Army War College, 2003), p. 24.

²⁷²William Shawcross, *Deliver Us from Evil: Peacekeepers, Warlords and a World of Endless Conflict* (New York: Simon & Schuster, 2000), p. 359.

²⁷³Walter Isaacson, 'Madeleine's War,' *Time*, May 17, 1999.

²⁷⁴William J. Clinton, 'A National Security Strategy for a Global Age', Washington D.C.: The White House, December 2000, p. 5.

the dominant military force, present an ultimatum to recalcitrant parties, and then take punitive action . . . to force compliance.”²⁷⁵

GLOBAL SYSTEMS

The Balkans has been a recurrent irritant in virtually all confrontations between the major powers through the wars during the largest period of the 20th century. The US’s equations with the UN and its ability to railroad matters through NATO were key impulses in deciding on the agency for such an intervention, although it would be wholly unfair even erroneous, to describe the availing of NATO and consequent circumvention of the UN as part of some deliberate pre-meditated design of Washington. While Russia had been a constant participant in the Contact group deliberations over the issue, the fact that Belgrade was a historical ally of Moscow, with cogent ethnic, political, economic and security exchanges, dating back to the heydays of the Cold War, was not lost on anyone. And since the US’s berating of Russia over its militaristic campaign to crush the contumacious insurrection by Islamists in the restive province of Chechnya during the mid-1990s, was enough to have Russia’s hackles raised to the prospect of US-led regime change masquerading behind the benign neoliberal agenda of governance and the ilk.²⁷⁶ Notwithstanding, Moscow was sufficiently riled and wound-up like a spring waiting to unleash, by the abiding Eastward European expansion of NATO, one that sought to bring the transatlantic alliance with footprint within Russian ‘borderlands’ periphery, if not virtually on Russia’s doorstep, an act that was anathema for Moscow.²⁷⁷ While the US was more than sentient of Russia’s winnowed powers, they were still not willing to embarrass Moscow, keeping in mind Russian pockets of influence, and its ability for tactical disruptions if not outright strategic scything. China too, for its part, stoutly opposed any extra-territorial intervention, into what it deemed to be strictly an internal affair of the Serbian state. Again, Washington did not want to take up direct cudgels with China, not wanting to disturb the configuration and framework of lucrative economic interchange.

With Russia being loathe, to allow passage for a specific UN Security Council Resolution, authorizing the deployment of military force under Chapter VII authority and framework, Washington and its Western European allies, all of whom were determined in

²⁷⁵Jimmy Carter, ‘Have We Forgotten the Path to Peace?’, *The New York Times*, 27 May, 1999.

²⁷⁶Ted Carpenter, “Damage to Relations with Russia and China,” in Ted G. Carpenter (ed.) *NATO's Empty Victory: A Post-Mortem on the Balkan War*, (Washington, D.C.: Cato Institute, 2000), p. 77, 86.

²⁷⁷Charles Kupchan, “Kosovo and the Future of U.S. Engagement in Europe: Continued Hegemony or Impending Retrenchment?,” in Pierre Martin and Mark R. Brawley (eds.) *Alliance Politics, Kosovo, and NATO's War: Allied Force or Forced Allies?*, (New York: Palgrave, 2000), p. 77.

their resolve, not to countenance the perpetuation of Milosevic's hideous designs any longer, were convinced of the writing on the wall, and the trammel that was to unfold, around the Council's horseshoe. With all efforts to obtain the UN's legitimacy headed for a dead-end, rather than chin-up to the prospect of a formal veto which would colour the ensuing operation as unlawful and illegitimate, the US chose to opt for NATO as a surrogate to achieve multilateral credence, given that the transatlantic alliance convenes membership of most European nations, most notably the big wigs who were also part of the Contact Group and more, hence, undercutting the argument that the US had bypassed the UN to serve its vested interests in Serbia.

Besides, it must be recalled that the Kosovo crisis was festering as NATO approached the fiftieth anniversary of its inception, wherein the Alliance was itself in the midst of internal deliberations over recasting itself in terms of mutations to its 'Strategic Concept.'²⁷⁸ The overwhelming drift within the Alliance was in favour of not disbanding NATO, but instead to recalibrate it away from its constitutive goal of Soviet Union led Communism's containment in Europe, and towards newer crisis challenges and 'out-of-sphere' operations.²⁷⁹ With NATO having inserted itself, into the Bosnia conflict a few years earlier, and having emerged from it relatively unscathed, in terms of any military reverses or body-bags, the precedent for such a limited and targeted operation, had already been forged on the canvass.

THE 'MORAL' IMPERATIVE

It has to be underscored that, the NATO commandeered 'Operation Allied Force' in Kosovo, was unique on the firmament of interventions, unfolding during the decade of the 1990s, carrying as it was the moniker, of an ostensible "humanitarian war" and "humanitarian intervention", distinct from interventions in other theatres, which despite being predominantly imbued with humanitarian dimensions, were not ubiquitously characterized, as such.²⁸⁰ Extending the moral imperative that drew the United States at the head of a Western nations cohort into preventing atrocities against civilians, British Prime Minister Tony Blair termed the intervention as "progressive war", rationalized as having been undertaken for civilian protection from persecution, and not in pursuance of cannibalized and vested national

²⁷⁸Tamas Valásek, 'NATO at 50', *Foreign Policy in Focus*, vol.4, no.11, 1999.

²⁷⁹"NATO's Role in Relation to the Conflict in Kosovo June 15 1999," NATO's Role in Kosovo, North Atlantic Treaty Organization, <http://www.nato.int/kosovo/history.htm>.

²⁸⁰Adam Roberts, 'NATO's "Humanitarian War" over Kosovo', *Survival*, vol.41, no.3, 1999, p.102.

interests.²⁸¹ Instrumental to the alleged humanitarian motivation was what Alex Bellamy calls “the Bosnia syndrome”, which postulates that, the principal reason for diplomatic proactivity on the part of the United States, was to atone for its embarrassing reaction to the earlier Yugoslav War, that had ravaged the landscape, besides unleashing unspeakable destruction, pillaging and displacement.²⁸²

President Clinton reflects on this, by accounting for what motivated him to resolutely deny an encore of earlier transpiring, stating in his memoir that, the Yugoslav war experience, had been a significant seminal exercise in learning and unlearning. Of course, counteracting this view of the echelon is the tempering reality of officialdom assessment, which went from U.S. Vice Chairman of Joint Chiefs of Staff Joseph Ralston’s sobering recognition that, Washington had its hands full with multiple preoccupying assignments, to US Army Chief of Staff Major General Denis Reimer’s clear no-go to war retort at General Wesley Clark’s premonition, of impending war clouds enveloping over Kosovo. The fact that, the Clinton White House cold shouldered the recommendation of Alexander Vershbow’s (US Ambassador to NATO) Memo, which pushed for a Dayton-style solution for Kosovo, was further evidence that, the objective evaluation of ground situational readiness, outside of the emotional matrix conditioning strategic decision-making, was deeply disconnected.²⁸³

However, the entity that seriously pushed for decisive action, from within the administration, was none other than Secretary of State Madeleine Albright, who in her earlier avatar as the US Permanent Representative to the United Nations, had lobbied hard for punitive action against Serbian insidiousness, during the Yugoslav Civil War of the early 1990s.²⁸⁴ The reasoning is hardly difficult to decode, particularly when observed in the spotlight of Secretary Albright’s immigrant background and profile. Born in Prague, she was often narrated tales of her family’s hair razing escape from the country, as Nazi occupation loomed. Such was her commitment, not to allow such machinations to be endured any longer that, when her Italian and French counterparts suggested an apparent dialling down of the strident language that was being directed at the Serbs, in response to her close aide and State Department Spokesman Jamie Rubin nudging her into acceptance, she retorted back with the phrase “*where do you think we are, Munich*”? This said, Secretary Albright’s predisposition

²⁸¹Speech by Prime Minister Tony Blair, ‘Doctrine of the International Community’, www.fco.gov.uk/text_only/news/speechtext.asp?2316&printVersion=yes.

²⁸²Alex Bellamy, ‘Realizing the Responsibility to Protect’, *International Studies Perspectives*, vol.10, no.1, 2008, p. 118.

²⁸³John Harris, *The Survivor: Bill Clinton in the White House*, (New York: Random House, 2005), p. 362.

²⁸⁴Barton Gellman, ‘The Path to Crisis: How the United States and Its Allies Went to War,’ *The Washington Post*, 18 April, 1999.

to an interventionist stance, was well known, through her conviction filled utterances, from myriad platforms and forums.²⁸⁵ She was on record to having confided with a Washington Post reporter that, she felt that she was on a divine mission, to dispossess the US military, off its ‘Powell Doctrine’ fetish, a shorthand for divesting Washington off its enamour for only those military interventions, which manifest US interests, are undertaken with overwhelming force and a clear sense of purpose, besides, where the exit strategy has been crafted, well in advance.²⁸⁶

Secretary Albright was the subject of incidental critique from time to time for her propensity to jump out ahead of the President and stake out a categorical position, which often would nudge even drag along President Clinton’s conditioning on matters, to conform to her viewpoint. In the Kosovo situation, her modus operandi was no different, as she chose to spearhead the drive for intervention, through rhetorical flourishes, smitten with conviction. Although Albright did become, more so than Clinton, the public face of the intervention in Kosovo, there is evidence that casts doubt on her role in galvanizing support. How far her traction went within the Clinton White House was arguable, as she was one exuberant strand of the ‘ABC’ (Secretary of State Albright; National Security Adviser Sandy Berger; and Secretary of Defence William Cohen) triumvirate of senior advisers, leaning on the President for attention and prioritization, with the likes of Berger and Cohen urging the President to heed caution, and eschew Albright’s propensity for overpromising.

PUBLIC AND ELITE CONVICTIONS

As a matter of fact, there is niggardly evidence if any across internal documentation or in the reflection accounts of statesmen’s memoirs, suggestive of any popular pressure which may have tipped the scales in favour of the United States’ intervention in Serbia over Kosovo. In fact, it is often quipped that Operation Allied Force was in unchartered territory in that it failed to engender any pro-war crescendo of opinion, within the legislative co-equal branch of American power, viz., the US Congress. While the US involvement in Kosovo had little to do with popular preoccupation or Congressional conviction per se, elite convictions however, did

²⁸⁵It is conjectured that she secured the hallowed job of Secretary of State, on account of her savvy political skills and her hawkish sound bites; especially her “This is not cojones, this is cowardice’ poke at Castro.” Her throwing down of the gauntlet, albeit in private, to the Chairman of the Joint Chiefs of Staff, General Powell asking him that “what’s the point of having this superb military if it wasn’t to be used”, was another sound bite that garnered her acclaim, for shooting from the hip and speaking her mind, intrepidly. In another interview she explained, “We get involved where the crime is huge, where it’s in a region that affects our stability – the stability of Europe is something that has been essential to the U.S. for the last 200 years – and where there is an organization, capable of dealing with it. Just because you can’t act everywhere, doesn’t mean you don’t act anywhere.”

²⁸⁶Michael Hirsh, ‘At War with Ourselves,’ *Harper’s* 299, July 1999, p.60

have its say and sway. From the outset, the Clinton administration was dealing with a polarized American electorate and divided opinion within interest groups and allied stakeholders over the precise course of action over Kosovo.²⁸⁷ What got Clinton evincing greater interest in interventionist involvement also was that it proffered his administration and potential legacy another arch-pillar to build on, given his otherwise almost singular obsession, with domestic politics and bread-and-butter economic issues of job creation as an antidote to unemployment and putting more money in the hands of the people so as to make their pancakes bigger, as the economic lingua goes there.

Another potential suitor for humanitarian intervention in Kosovo came from none other than UK Prime Minister Tony Blair, a close friend of President Clinton and someone who saw his own political rise within the Labour Party, almost as a mirror reflection of Clinton's within the Democratic Party. If Clinton represented the New Democrats wing within the US Democratic Party, Tony Blair was the poster-boy for what was then 'New Labour'. Prime Minister Blair's serious desire to forage for peace in the Balkans served as a salutary contributing factor in President Clinton's quest for strong willed resolution of the Kosovo crisis. A potential third reasoning for Clinton's decisive recalibration, in favour of strong action against Serbia over Kosovo, was veritable domestic politics. NATO and its expansion into Central and Eastern Europe was widely well received in the US, but more positively favoured by demographic constituency groups such as the Polish-Americans, who in this instance saw this as an opportunity for them and their native country, to thumb noses at Moscow, after decades of political insubordination.²⁸⁸ Similarly Kosovo with its low risk casualty proposition on account of being an effusive air campaign with no deployment of boots on the ground, seemed like the perfect halo for Clinton to brim in, after the sullyng track record of clumsy intervention in Bosnia, and an inexcusable no-show in Rwanda.²⁸⁹ While this had not set Clinton's own predilections or the lack of it vis-à-vis humanitarian interventions, it nevertheless allowed him to take the focus away from his domestic troubles, which were now mounting on account of his sexual escapades in the White House, and the impending impeachment trial, waiting in the wings.

As for Congressional support, the affirmative vote to his commissioning of NATO action against Serbia by a margin of 58:41, threw the President a lifeline, coming as it was from a legislative Chamber under Republican control, even as the anticipated House vote

²⁸⁷David Halberstam, *War in a Time of Peace*, (New York, NY: Scribner, 2001), p.273

²⁸⁸James Bennet, 'Analysis: Clinton's Foreign Policy Crystallized,' *New York Times*, 1 May, 1998.

²⁸⁹Jesse Jackson, 'Two Continents,' *The Wilson Quarterly*, vol. 23, no. 314, Summer 1999, p.22.

failed to pull through.²⁹⁰ As regards public opinion, that appeared to resemble the polarized opinions all round, with pre-war polling numbers being suggestive of a less than enthusiastic electorate (42-43%), but which reached north of 60%, the day after NATO action had commenced, and President Clinton had made his elaborate case to the American people, vide his primetime address, only to dip a tick below 50%, by May 1999.²⁹¹ The diminution in public support was also attributable to the on-going impeachment trial underway against Clinton. As for those electoral and legislative constituencies who opposed this intervention on grounds of selective cherry-picking by the US President, such opposition may little, if any headway.²⁹² Thus, congressional pressure is highly unlikely to have driven the decision to intervene; instead, it seems that the Clinton administration faced difficulties in mustering enough congressional support for the airstrikes.

Consideration of overbearing pressure from international organizations, often seen as catchments of popular opinion, makes for interesting reading. Although NATO carried the can on Kosovo, it was all smooth sailing for Washington, here too. Sceptics abounded, in the form of the German and Italian governments, who were holdouts on any misadventure, without the formalization and transparent dissemination of an elaborate war plan, and who had to be assiduously persuaded, in the run-up to decision-making, within NATO's political forum.²⁹³ In contrast, navigating through the United Nations happened to be tricky. On the one hand, the transatlantic alliance had categorically affirmed that its actions were in pursuance of upholding UN Security Council Resolution 1199, in letter and spirit, and to bring a recalcitrant Belgrade into desired compliance with the terms of this Chapter VII resolution. This said, NATO's case of not being in circumvention of the United Nations, was buttressed to an extent, by the 28th January 1999 statement of UN Secretary General Kofi Annan, who whilst addressing the NATO Council characterized the situation in Kosovo in the wake of the macabre Racak incident in a manner that signalled a potential green-light for military action to thwart the nefarious designs of the Serbian political leadership and its

²⁹⁰Danielle Sremac, *War of Words: Washington Tackles the Yugoslav Conflict* (Westport, C.T.: Praeger,1999), pp. 216-217.

²⁹¹Terrance Hunt, 'Kosovo Hurts Clinton in Polls,' *Southcoast Today*, 29 May, 1999.

²⁹²Rev. Jessie Jackson highlighted a concern among many African-Americans that, the U.S. undermined its own humanitarian credibility in Kosovo, by not acting elsewhere in the world, most notably in Sierra Leone, where Jackson argued that, five hundred thousand lives had been lost and more than a million people were displaced, outside the glare of cameras and beyond the eyes of Western 25 journalists.

²⁹³Marc Weller, *The Crisis in Kosovo, 1989-1999: From the Dissolution of Yugoslavia to Rambouillet and the Outbreak of Hostilities, International Documents and Analysis*, (Cambridge,U.K.: Documents & Analysis Publishing Ltd, 1999), p. 393.

forces.²⁹⁴In a press conference later, Annan said that “normally a UN Security Council resolution is required to authorize military action by member states” indicative of the fact that, such a procedure is not mandatory in every instance, and quite possibly, this could have been one of those situations, worthy of an exemption.²⁹⁵ On the day of the NATO’s commencement of aerial bombing of Serbian positions, viz., March 24, 1999, Annan admitted to times when the use of force may be legitimate in the pursuit of peace, however, did stress that the Security Council should be involved in any decision to resort to the use of such force.²⁹⁶

MASS MEDIA

There is scant evidence if any, to establish the causal link between, Clinton decision to thrust himself into intervention over Kosovo, and the media having nudged or goaded him into it. If anything, what construes from the gist of evidence on hand is that, media coverage pursued rather than preceded the initiation, of Operation Allied Force.²⁹⁷ The American media did keep the developments in Kosovo in the headlines, through the time of the policy debates, and while NATO threats were being dished out. Whether embedded journalism or not, covering the twists and turns from the frontlines of battle, be it in Rwanda or in Kosovo, carries their own respective sets of perils.²⁹⁸ Reportage out of Kosovo was far from easy, as multiple reporters were targeted and many others banished from the scene, through revocation of their visas, harassment, and intimidation, not to mention the odd brushes with potential physical harm too. As the US media was off ground zero, there was neither any outraging footage nor any grisly pictures, which could churn the morality of an entire nation, like had been the case with Somalia, Rwanda, Bosnia, etc. But the ‘no-pictures-no-news’ dictum coined by NATO Spokesperson Jamie Shea, was repudiated by vanguard coverage for the abominable slaughtering of forty five civilians in Kosovo at the hands of Serbian forces, during January

²⁹⁴In public remarks before meeting the North Atlantic Council, NATO’s top decision-making body, SG Annan said that “the bloody wars of the last decade ... have [not] left us with any illusions about the need to use force, when all other means have failed. We may be reaching that limit, once again, in the former Yugoslavia.”

²⁹⁵Bruno Simma, ‘NATO, the UN and the Use of Force: Legal Aspects’, *European Journal of International Law*, vol.10, no.1, 1999.

²⁹⁶Peter A. Huchthausen, *America’s Splendid Little Wars: A Short History of U.S. Military Engagements, from the fall of Saigon to Baghdad*, (New York: Penguin, 2004), p. 215.

²⁹⁷Kimberly Bissell shows that, in over a year before the intervention, i.e. from March 2, 1998 to March 23, 1999, there were 359 Kosovo-related stories, aired on network news programs, which is a tick under a story a day, which clearly does not qualify, as massive media coverage. In comparison, once the airstrikes began, television networks aired over 972 stories, in a flat under two months period.

²⁹⁸Piers Robinson, “Global Television and Conflict Resolution: Defining the Limits of the CNN Effect,” in Eytan Gilboa (ed.) *Media and Conflict: Framing Issues, Making Policy, Sharing Opinions*, (Ardsey, N.Y.: Transnational Publishers, 2002), pp.187-188.

1999, which was seen to have pivoted Washington, towards earnest decisive military action.²⁹⁹

THE 'CREDESCENCE' TRAP

There has been the tendency to downplay implications of allowing the Kosovo situation to simply fester and degenerate, and treat characterized assertions that intervention was imperative to preserve regional stability within the Balkans and across South Eastern Europe and also uphold the credibility of the NATO Alliance, as being simply disingenuous. However, the weight of evidence requires us to consider otherwise. For much of the period through the escalating Kosovo skirmishes between Serbian and Kosovo Liberation Army forces, it was the belief in the West that a robust politico-diplomatic and security posture would effectively deter the protagonists, particularly the stronger Serbian adversary. However, this belief was soon upended, as it became apparent that Milosevic was at his phlegmatic best, and was shrugging off warning signs, that would invite the wrath of the West. With rhetoric not soliciting compliance, action had become mandatory, else, the edifice of credibility of NATO alliance in particular and the Western political leadership in general would be shaken from its lairs, with consequences for strategic involvement in other regions.

James Baker III had famously washed America's hands off the Bosnian conflict, averring that, Washington did not have a dog in the fight, so-to-speak. But Kosovo was cut from a different cloth, as it wouldn't have taken long for an escalated level of violence in Kosovo, to infiltrate contiguous territories, thereby sucking-in, an as it is tenuous Albania, and Macedonia, whose demographic composition of Slavs and Albanians, made for a combustible mix.³⁰⁰ Such a conflict spiral would have possibly widened the remit of warfare further afar, hemming-in Bulgaria with its antecedent territorial claims to Macedonia, for example, and Turkey, who could have been summoned into the throes, on the back of its defence agreement with Albania.³⁰¹ Notwithstanding, the Clinton administration's focus on

²⁹⁹A Washington Post article that reconstructed the Kosovo decision-making process stated that the macabre Racak incident transformed the West's Balkan policy, as singular events seldom do. Very graphic photos and the credibility of Ambassador Walker, the source, proved to be critical elements in the story's ability to influence the administration, and its NATO allies, rousing them into concerted action.

³⁰⁰Jeffrey Record, *Making War, Thinking History: Munich, Vietnam, and Presidential Uses of Force from Korea to Kosovo*, (Annapolis, M.D.: Naval Institute Press, 2002), p. 120.

³⁰¹Secretary Albright had famously said that there is no natural boundary to violence in Southern Europe, and she alongside President Clinton had raised the orgy of capitulating dominoes. It's these concerns which made Kosovo different from other places in the world, which were in worse circumstances at the time (e.g., Afghanistan, the Congo, Eritrea/Ethiopia, Sierra Leone, and Sudan). See "Remarks by Secretary of State Madeleine K. Albright at U.S. Institute of Peace, February 4, 1999," The United States Institute of Peace, Washington DC, USA, http://www.usip.org/events/pre2002/albright_020499.html.

Kosovo could be read from Amb. Holbrooke's iteration of the imperative to contain the conflict within Serbia's sovereign confines, as also dating back to the confidential communication that President George H.W. Bush had dispatched to Milosevic, during the early days of the Yugoslav war, voicing Washington's unequivocal intention to come down hard on Serbia, if its dispute with Kosovo, were to recur and escalate, the so-called 'Christmas Ultimatums' that were subsequently reaffirmed by Clinton, not once but twice over.

Kosovo thus became a crucial test of the Alliance's continuing relevance, and the alliance constituents were aware of the public relations disaster it would come to be, if Serbian thumbing of the nose at them, went unaddressed. Despite being vanquished in his bid to quell the conflicts with Bosnians and the Croats, essentially by the overwhelming nature of NATO action, Milosevic had yet not been sufficiently deterred, which led some within his ranks to audaciously cock-a-snook at NATO, embodied in the sardonic quip that "a village a day keeps NATO away."³⁰² The temerity of the Serbs, in the face of rising threats from Brussels, was seen in the impunity of the Raçak massacre, which constituted the inevitable pivot moment. Having decided for a sticks over carrots approach to negotiations in Rambouillet, despite not handing down Milosevic a *fait accompli*, NATO members were confident that he would not actually invite NATO fury onto himself a second time, and after some posturing for political consumption back home, he would eventually reconcile and resign to the limits of his destiny.³⁰³ However, this exchange between Holbrooke and Milosevic was enough to set all speculation to rest, as Holbrooke's nudge to the Serb strongman, to consider the consequences of his stubbornness saying "look, are you absolutely clear in your own mind, what will happen, when I get up and walk out of this palace, that we are now sitting in?", was met with a pat reply from Milošević, that simply and innocuously said, "You're going to bomb us." It's a different matter that, upon seventy eight days of bombing, Serbia conceded to the political terms set out by the Contact Group, which were duly delineated, in UNSC Resolution 1244.

³⁰²Press conference by Secretary-General, Dr Javier Solana and SACEUR, Gen. Wesley Clark, www.nato.int/kosovo/press/p990325a.htm.

³⁰³The CIA coordinated Interagency Intelligence Report had concluded that, Milošević did not stomach a war that he could not win, hence, he was expected to seek to give just as much as would be necessary to avoid NATO bombing.

POLICY INERTIA

Policy inertia serves to explicate the justification for indulging with Kosovo, as also the willingness and ability to undertake the operation. While considerations of European regional stability and the sanctity of NATO and its threat averments were uppermost in articulation, the desire to minimize casualties dictated the mode of intervention, i.e. the aerial mission. This said, it must be remembered that the Balkans within South Eastern Europe has been considered to be a geopolitical backwater in European perception, and hence claims that non-intervention would descend the region into anarchic chaos and retard the dividends of Dayton, were a bit of a stretch, reminiscent of American rationalization of intervention in South Vietnam back in the 1960s, on account of the financial moneys it had sunk, in the country.

Policy inertia also contributed to the thinned reasoning for US involvement in Kosovo, where considerations of societal empathy and institutional credibility became the impelling force, in the absence of any compelling national interest. While the decision to confine the operation to an aerial assault itself was to alleviate any of the pushbacks that came from the Somalia experience, the predetermined mode of operation made the mission that much easier to conduct, so much so that the Clinton administration did not seem to think through the adopted option the whole hog, nor was it ready with fall-back options, in the event that Milosevic did not relent. Too many presuppositions and presumptions, dictated the US's strategic use of force, such as being sold out on the hypothesis which held that, since Milosevic had buckled to NATO air action during the precursor Yugoslav War, he would end up disposing likewise, now too. In the subtle words of General George Joulwan, former Supreme Allied Commander (Europe), "we might have been seduced a little by technology, rather than by good professional judgement, of what is necessary to win a war."³⁰⁴ It says a lot when in the presence of the visiting Italian Prime Minister to the White House, President Clinton when put on the spot by the pointed question of a reporter, who asked as to what would ensue if bombing did not mend Belgrade, came across as stumped, before being bailed out by NSA Sandy Berger who replied that, the bombing would be incessant, until Belgrade conclusively yielded.

NATO's intervention in Kosovo during 1999 was undertaken with humanitarian reasons being among several factors driving the armed action. Although the UN did not authorise the intervention in a de jure sense, NATO's action derived some legitimacy from

³⁰⁴ Sherry Ricchiardi, "Searching for Truth in the Balkans," *American Journalism Review*, June 1999, p.26

prior UNSC Resolutions. It gained more from the fact that it was clear to nearly all outside observers that FRY forces had been responsible for serious abuses of the human rights of the Albanian population in Kosovo. It was the moral and ethical dimension underpinning NATO's action, coupled with the employment of military coercion that led to it being labelled a 'humanitarian intervention.' The NATO action in Kosovo gave significant impetus to debates about the nature, justification and relevance of such activities in the post-Cold War security environment. Interventions driven by ethical considerations reveal important contradictions in the international system, in that they expose the conflict between Order and Justice at its starkest'. NATO members' efforts to justify their Kosovo intervention also reflected the contradictions and frustrations of attempting to uphold some norms (regarding human rights), while seemingly violating others (relating to the legality or otherwise of the use of armed force). The difficulties and contradictions have helped to ensure that, the Kosovo crisis offers a dubious precedent for future international intervention, amidst the contested practice of using force, in defence of international norms. However, its immutable that, the Kosovo intervention was declared as 'illegal but illegitimate', by the Independent International Commission on Kosovo (IICK); had met with retrospective rationalization from the UN Security Council; and was showcased by Secretary General Annan, through his articulations, both within and outside of the global body, as a litmus test for responsible civilian protection, one which balances the imperatives for calibrated military force with the need to preserve the sanctity of the rules based global order, in pursuance of humanitarianism.

CHAPTER V

HUMANITARIAN INTERVENTION IN A CHANGING PARADIGM :THE DOCTRINAL PRAXIS OF THE ‘RESPONSIBILITY TO PROTECT’(R2P)

It may be argued that the Responsibility to Protect (R2P), has sanitized, much of the revolutionary potential of human security. While R2P has not subsumed human security, in that, the latter arguably involves a broader array of issues and themes which continue to be discussed, it has nevertheless come to dominate the debate on the protection of human rights, and specifically, preventing and responding to mass atrocities within sovereign frontiers. Whereas human security, in its early inception, constituted a challenge to the state-centric nature of the international system, R2P maintains the systemic status quo, and treats states and the state-based nature of the United Nations (UN), as unalterable constants. While R2P is propelled largely by non-states actors, the strategic calculus focuses on altering the behaviour of states, rather than reforming the state-based system in a way which coheres with the original human security approach of empowering individuals, at the expense of states. This Chapter examines the concept of the ‘Responsibility to Protect’ (R2P), in terms of its genesis, antecedence, evolutionary trajectory and the odyssey of its consolidation as a norm in practice. The Chapter attempts to decode whether the ‘R2P’ as touted by its proponents, indeed marks a fundamental break from the evolution of the doctrine of humanitarian intervention through the 1990s, or is simply a trajectory of transition from the construct of humanitarian intervention, as is the content of the critics and the naysayers. The Chapter wrestles with the dichotomy of whether ‘R2P’ constitutes a ‘legal norm’ under international law or is merely an ‘ethical norm’, creating a sense of moral expectations from the international community, regarding human rights crimes, committed, within sovereign boundaries.

The refrain “something must be done” periodically rang out in the face of humanitarian crises in the 1990s and the Rwandan genocide precipitated an outraged chorus of “Never Again!” Yet, precisely who should do the proverbial something, quickly emerged as a hot-button issue. By the end of the decade, in light of the non-intervention in Rwanda and the “illegal but legitimate” intervention in Kosovo, the existing regulations appeared unsuitable, if not anachronistic. Human security constituted in its early incarnation, an attempt to challenge the existing system, specifically to revolutionise the locus of authority. Advocates dissented from the prevailing consensus regarding the immutability of the state-

based system and fatalist conceptions of power politics, in favour of an agenda which was predicated on a radical reshaping of international politics. This movement has, however, through the rise of the Responsibility to Protect (R2P), evolved into an acceptance of the status quo and recognition of the Security Council's primacy. The R2P champions moral advocacy rather than legal reform; the focus has become that of lobbying states to change their behaviour, rather than challenging the state-based international system per se. R2P is thus a restatement of the very international legislation and systemic regulations, that suffered such disrepute in the 1990s and impelled the establishment of the International Commission on Intervention and State Sovereignty (ICISS), which coined the term R2P in the first place. The revolutionary potential of the concept was, and remains, therefore, predicated on the notion that "good" people can influence the powerful, to change their ways.

Clearly, there is a disjuncture between the world imagined by R2P and the reality. Too much short-term superficial acclaim and hypocritical endorsement by the great powers, obscures the real structural problems, which hinder the realisation of the goals of human security, to the advantage of the purveyors of the systemic status quo. If the end of the Cold War led upsurge in interest in both human rights, and humanitarian intervention the promotion of human rights in the post-Cold War era was not entirely novel, there was an aspect to the movement that, did comprise something revolutionary in outlook. This was captured in the rise of the concept and operating notion of "human security," the emergence of a discourse which sought not just to have the rights of the individual recognised, but to place them at the top of the international political agenda—to make humans, rather than states, the referent object of security. Indicatively, what is needed today is not so much territorial security, as in the security of the state, but in fact, human security, the security of the people in their everyday lives."³⁰⁵ Given that the subject area of international security, and arguably the whole discipline of International Relations (IR), had focused almost exclusively on the state when discussing security, this discourse asserting the primacy of the individual, constituted a radical challenge. Of particular novelty was that human security sought to consolidate the individual's position, as primary referent object of security by circumventing the state system.³⁰⁶

The means by which human security was to be championed, and its vision realised, some argued, was through non-state actors inhibiting the capacity of states to determine the

³⁰⁵Ken Booth, 'Human Wrongs and International Relations', *International Affairs*, vol. 71, 1995, p.103.

³⁰⁶Jessica Mathews, 'Redefining Security', *Foreign Affairs*, vol. 68, 1989, pp.162-163.

international political agenda, specifically, by preventing them from behaving in ways contrary to the promotion and protection of human rights. The rise of human-security imposes constraints on state sovereignty through the mobilization of international civil society, which would lead to the sharing of power between state and non-state actors in a globalising world.³⁰⁷ This aspect of the human security agenda was, therefore, centred on global civil society; though a fuzzy and a contested concept, this movement sought to blend normative theory with international relations and constituted a set of diverse non-governmental institutions which is strong enough to counterbalance the state and prevent it from dominating and atomizing the rest of society.³⁰⁸

The radical “bottom-up” approach to the international arena bases its postulating prescriptions on cosmopolitanism, rather than on those mainstream frameworks, which, though heterogeneous, recognises the traditional inter-state system, as immutable. Human security in certain renderings, articulated an alternative vision of international politics, based on the idea of transcending state sovereignty, so as to alter both the systemic rules and institutional architecture. The interest in human security is not confined to academia; references to the term abound in international political discourse and many official UN reports cite the term, as the organisation’s goal. The early 1990s also witnessed a dramatic upsurge in optimism, as to the UN’s future role; rather than being hamstrung by the competing interests of states, the UN was, some believed, poised to become a genuinely authoritative organisation, capable of shaping the behaviour of its member states, rather than simply reflecting their particular agendas.³⁰⁹ While proponents of human security were not a heterogeneous mass, a diverse array of reflections and recommendations were made by myriad actors, with two common principles providing a foundation from which the plurality of opinions proliferated; first, that the security of the individual was more important than that of the state, and second, that the existing system: the legal, institutional and political status quo, was untenable and had to change.

Much of the revolutionary zeal dissipated, however, as the 1990s progressed; in particular, the idea of the UN taking a more independent, proactive and formative role in international politics had all but lost its potency by the end of the decade. Proponents of

³⁰⁷Nicholas Thomas, N. & William Tow, ‘The Utility of Human Security: Sovereignty and Humanitarian Intervention’, *Security Dialogue*, vol. 33, 2002, pp.177-178.

³⁰⁸Jean Grugel, ‘Democratisation Studies Globalisation: The Coming of Age of a Paradigm’, *British Journal of Politics and International Relations*, vol. 5, 2003, p. 258, 275.

³⁰⁹Mats Berdal, ‘The UN Security Council: Ineffective but Indispensable’, *Survival*, vol. 45, 2003, p.7.

human security became increasingly orientated around mobilizing campaigns to appeal to states to change their behaviour; the idea of a radically different international system with formalized roles for non-state actors representing global citizenry evolved into a preference for the maintenance of the existing system with non-state actors acting as advocates, and at times, advisers to states. While this certainly involved a role for global civil society, it constituted, essentially, the various NGOs becoming international lobby groups. States retained their position of primacy and the international legal architecture remained the same, while global civil society activism centred on moral suasion. This was however a role which some maintained, still enabled global civil society to effect real change in the area of human security.

NATO's intervention in Kosovo in 1999 was heralded as evidence of the capacity of global civil society activists, to push states to act in the interests of those suffering abroad, and catalysed a series of effusive reflections on the impact of the new "norms" proliferated by global civil society.³¹⁰ By the end of the 1990s, it could be said that pressure from global civil society had given rise to widespread acceptance of humanitarian norms. Thus, while the system remained the same, the manner in which states behaved, was ostensibly different, because of the vocal advocacy of human rights groups. This was reflected in the 2000 World Report of the Human Rights Watch, which welcomed the significant progress recently made in the area of human rights protection, noting that the international community displayed a new willingness to deploy troops to stop crimes against humanity, thereby heralding the beginning of a new era for human rights. This optimism was predicated on the emergence of new "norms", rather than laws. The vision of a world more responsive to human security was therefore to be achieved, not by actually changing institutions, but rather by changing the discourse of international politics, specifically through the proliferation of "norms", which would ostensibly constrain state behaviour. Thus, by the year 2000, the majority of human security's proponents had largely determined that, the most effective means by which they could realise the goals of human security was through advocacy, directed at the levers of power, viz., the States. Calls for substantive changes to the international legal system, though occasionally still advanced, were essentially drowned out by the more vocal discourse of norm proliferation and moral suasion. R2P was conceived at precisely this time and reflected this normative framework and political strategy, evolving and unfolding at the time.

³¹⁰Nicholas Wheeler, 'Agency, Humanitarianism and Intervention', *International Political Science Review*, vol. 18, 1997, p.9, 22.

Historically, intervention in countries on humanitarian grounds has been seen as illegal, under international law. During the 1990's, the world witnessed numerous examples of domestic conflicts where the civilian population were deliberately targeted. While the legality of intervention on humanitarian grounds has remained contested, military interventions into Northern Iraq, Somalia, Haiti, Bosnia and Kosovo, has been widely seen by the international community as 'legitimate.' These actions were argued to be legitimate, based on the pressing moral obligation of States to stop the cruelty. While the unfolding of these events generated a growing international acceptance for the norm of 'humanitarian intervention', many States refused to fully condone the intervention.³¹¹ Even among its supporters, States did not consistently intervene to stop humanitarian atrocities. The situations in Rwanda, the Democratic Republic of Congo, and Sudan are just some examples where the international community was unwilling to intervene, even though hundreds of thousands of civilians were being slaughtered. This deeply disturbing reality revealed to the world that forceful international reactions were not always initiated, as a response to human catastrophes. The 'pick and choose' policy, inherent to humanitarian intervention, made States question the capability of the norm to deal with humanitarian atrocities. In a heated address to the Member States of the United Nations (UN), the Secretary-General, Kofi Annan, articulated the dilemma facing the international community: "The inability of the international community in Kosovo, to reconcile these two equally compelling interests – universal legitimacy and effectiveness in defence of human rights – can only be viewed as a tragedy...It has revealed the core challenge to the Security Council and to the United Nations as a whole in the next century, to forge unity behind the principle that, massive and systematic violations of human rights – wherever they may take place – should not be allowed to stand."³¹² The Responsibility to Protect (R2P) is a principle that, since its birth in 2001, has caused much debate internationally, for what it has meant in the past, what it entails in the present, and what potential it has to become in the future. In its close to two decades of existence, the 'responsibility to protect' doctrine has grown tremendously, transforming from a gleam in a commission's eye to what may now be described, as a broadly accepted international norm.³¹³

³¹¹Jon Western, 'Humanitarian Intervention, American Public Opinion, and the Future of R2P', *Global Responsibility to Protect*, vol. 1, 2009, pp.324-325.

³¹²Kofi Annan, 'Two Concepts of Sovereignty' Address to the Fifty Fourth Session of the General Assembly, in *United Nations, The Questions of Intervention: Statements of the Secretary General* (New York: UN Department of Public Information), 1999.

³¹³Gareth Evans, 'From Humanitarian Intervention to the Responsibility to Protect', *Wisconsin International Law Journal*, vol. 24, 2006-2007, p.712.

Pioneering proponents of the doctrine, in the field of humanitarian assistance and protection have opted for calling R2P a norm, without expanding on whether the principle is mature and developed enough, to have undergone the transition into a norm. In fact, R2P has a history of being described by its supporters as a broadly accepted international norm, with the potential to evolve into a full-fledged rule of customary international law. However, R2P still has a long trajectory ahead due to the evident hesitance by several states who continue to oppose it. While some of the concepts of R2P correlate harmoniously with pre-existing international human rights laws, others pose a drastic challenge to extant principles and theories under the global structure, such as the deeply rooted ideologies of state sovereignty and non-intervention. From its introduction by the International Commission on Intervention and State Sovereignty, to its endorsement in the Secretary General's High Level Panel Report on Threats, Challenges and Change in 2004, then again in the World Summit Outcome Document of 2005, it is undeniable that R2P has come a long way in the norm life cycle. However, the misapplication of the principle in the 2011 humanitarian crises in Libya, and subsequently in Syria has caused significant and possibly irreparable damage in its path, towards becoming a universally accepted principle of international law.³¹⁴

Early norm adoption is the result of domestic political struggle and norm entrepreneurs, but, later adoption is the result of a combination of internal demands and external diffusion, leading the effort to introduce and develop a new norm and attempting to persuade other countries to endorse it. The Responsibility to Protect (R2P), started as an idea from Secretary General Kofi Annan (a veritable 'norm entrepreneur', in his capacity as the Chief Executive of the premier inter-sovereign global organization), who lead the effort to introduce and develop the potential norm, and attempted to persuade other countries to lend it the requisite traction, in pursuance of rendering it, some form of customary international law.³¹⁵ Secretary General Annan, through his op-ed column, penned for the Economist magazine in 1999, and subsequently, through his Address to the UN General Assembly, during September 2000, challenged the international community, to develop a way of reconciling the twin principles of sovereignty and protection of self-determination on the one hand and fundamental human rights on the other.³¹⁶

³¹⁴Noah Shawki, 'Responsibility to Protect: The Evolution of an International Norm', *Global Responsibility to Protect*, vol. 3, no. 2, 2011, p.175.

³¹⁵Phillip Rotmann, G. Kurtz, G., and S. Brockmeier, 'Major Powers and the Contested Evolution of a Responsibility to Protect', *Journal of Conflict, Security & Development*, vol. 14, no. 4, 2014, p. 364.

³¹⁶Sabine Hassler, 'R2P and the Protection Obligations of Peacekeepers', *Journal of International Humanitarian Legal Studies*, vol. 1, no. 1, 2010, p.207.

The concept of a responsibility to protect people from genocide and other mass atrocities seemed stillborn, after the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS), first proposed it, in December 2001. In the wake of the strong focus on counterterrorism at the time, the report sparked little enthusiasm outside the liberal internationalist elite. For many states, the framing of R2P's scope in very broad terms, like "large scale loss of life, actual or apprehended", sounded like another attempt by Western powers to justify unilateral interventions, in line with the old idea of humanitarian interventions. Besides, the Iraq war had started in 2003 and the humanitarian justifications for it by UK Prime Minister Tony Blair and US President George W. Bush, sharply heightened apprehension for many. Consequently, the Canadian government was not able to introduce R2P as an agenda item, at either the UNGA or the UNSC.³¹⁷ At the same time, the humanitarian crisis in Darfur, where the Sudanese government was alleged to be patronizing mass violence against civilians, exposed the policy implications of these divisions. R2P was revitalised through the recommendations of the High Level Panel (HLP), set up by Kofi Annan to provide recommendations for UN Reform.

The chief architect of R2P in the ICISS report, Gareth Evans, was made part of the panel, which in its report sought to shift the focus from the "right to intervene of any state" to the "responsibility of every state", to protect people suffering from avoidable catastrophe; this collective responsibility was exercisable by the Security Council, authorising military intervention as a last resort, in the event of genocide and other large scale killing, ethnic cleansing or serious violations of international humanitarian law, which sovereign Governments have proved powerless or unwilling to prevent. UN Secretary-General Kofi Annan, who had deliberately nominated Evans to the HLP, quickly followed up with his own reform proposals for consideration by world leaders who would gather to commemorate the sixtieth anniversary of the UN, in September 2005. His report recommended that, the responsibility to protect must be embraced, and when necessary, acted upon on. It was only because of this advocacy in the two reform reports that, R2P became an agenda item for the negotiations, prior to the World Summit, in the first place.³¹⁸ Because complex norms can create confusion and allow for ambiguous interpretations, simple and straightforward norms are more likely to develop into strong and effective norms, and are more likely to generate

³¹⁷Sarah Brockmeier, G. Kurtz, and J. Junk, 'Emerging Norm and Rhetorical Tool: Europe and a Responsibility to Protect', *Journal of Conflict, Security & Development*, vol. 14, no. 4, 2014, p.436.

³¹⁸Jennifer Welsh, 'Norm Contestation and the Responsibility to Protect', *Global Responsibility to Protect*, vol. 5, no. 4, 2013, p.371

compliance. Consequently, the R2P doctrine is having trouble achieving full compliance, since multiple aspects of it remain nebulous with ambiguities leaving room, for susceptibility to manipulation and abuse. In order for a norm to properly evolve, it should provide clear and non-derogatory terms, that allow for predictability as well as consistency, across all kinds of cases. One of the root problems of R2P is that it does not yet enjoy that level of clarity and specificity, given that each humanitarian crisis stem from different reasons, and have to be analysed on a case-by-case basis. Additionally, to progress, a norm must be a logical fit amongst other existing norms. The R2P principle is fundamentally incongruent with the non-intervention UN policy that exists, in the current realm of international law. The clash against the higher principle that is the UN Charter, accepted universally and recognized as international law, severely affects the development of the doctrine. Moreover, R2P introduces a hierarchical relationship between the intervening organization or state and the protected population that does not in fact exist in law, yet. Another point that may invalidate R2P as law is that it contains a discretionary mandate. Because in its structure, the United Nations systematically differentiates between its subjects in the application and enforcement of laws, doubts arise about whether said discretion could ever be used wrongly and subsequently nullifies it as a legal system.³¹⁹

In 2006, Gareth Evans, a pioneer of R2P, extolled the virtues of the R2P construct, suggesting the emergence, almost in real time, of a new international norm, one that may ultimately become a new rule of customary international law, a statement which came a year after the recognition of R2P by its inclusion in the 2005 World Summit Outcome Document.³²⁰ Nevertheless, as humanitarian crises continued to pile up in the following years, some scholars have grown more critical of the concept and its added value. After R2P was adopted by the political discourse of the UN, debates on whether the notion has been evolving from a policy into an international norm have flourished. Some consider R2P to be a norm without specifying what kind of a norm it is and others talk about its potential as a developing legal norm. There is general consensus that R2P is a norm, but much less agreement on what sort of norm it is. In this vein, it might be reasonable to suggest that R2P has evolved into an international ethical norm, one that sets an international standard for appropriate

³¹⁹Anne Orford, 'Rethinking the Significance of the Responsibility to Protect Concept', Proceedings of the Annual Meeting, *American Society of International Law(ASIL)*, March 2012, p.28.

³²⁰Aidan Hehir, 'The Responsibility to Protect: Sound and Fury Signifying Nothing?', *International Relations* , vol. 24, 2010, p.2.

behaviour.³²¹Albeit the argument that R2P is an international norm is not new, its classification as an ethical norm is, and this has significant implications, regarding the norm's implementation. Such implications stem from the difference between ethical and legal norms. Legal norms/rules possess legally binding powers and have direct legal consequences in cases of breach of the rule, whereas ethical norms do not have such power. Thus, the characterisation of R2P as an ethical norm, delimits the power of R2P in terms of coercing states and/or the international community, to act in a certain manner. Accordingly, while R2P defines appropriate behaviour for states as well as the international community, and naturally creates an expectation of conformity, it can neither assure conformity nor legally sanction inconformity.

From a constructivist point of view, the challenges the international community faces contribute to the emergence of new norms. In this vein, it can be posited that the human rights crises of the 1990s led to the construction of R2P. In responding to mass atrocities against humanity, humanitarian intervention remained a relevant foreign policy tool while its implementation has been a source of moral and legal divides, within the international community. Examples of inaction (as in Rwanda), failed interventions (as in Somalia), or unauthorised interventions (as in Kosovo), have been at the heart of the debates on whether or not to intervene for humanitarian reasons, through the 1990s. Humanitarian intervention has commonly been perceived as a 'right to intervene' by states. In order not to grant states such a right, the international community refrained from formally establishing humanitarian intervention, as a legal measure against grave violations of human rights. Consequently, norm entrepreneurs such as Kofi Annan, Francis Deng and Gareth Evans, among many others, opted to introduce a new notion named 'the responsibility to protect', to secure the lives and fundamental rights of masses, instead of adhering to the controversial arguments in favour of a 'right to intervene.'³²² First in 1999 and then in 2000, Kofi Annan raised a challenging question that, "if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights, that affect every precept of our common humanity?"³²³

³²¹Alex Bellamy, 'The Responsibility to Protect - Five Years On', *Ethics & International Affairs*, vol. 24, no.2, 2010, p.160.

³²²This old idea was already pronounced, by contractual theorists such as John Locke, but had been more recently applied to the modern context in an influential study by the Brookings institution that coined the term 'sovereignty as responsibility'. See Deng et al., *Sovereignty as Responsibility: Conflict Management in Africa*,(Brookings Institution Press, Washington, DC, 1996).

³²³International Commission on Intervention and State Sovereignty (ICISS), '*The Responsibility to Protect*', 2001, p.15. www.dfaitmaeci.gc.ca/iciss-ciise/menu-en.asp (Accessed on 6March 2020)

In response to Annan's repeated calls, former Canadian Minister of Foreign Affairs Lloyd Axworthy in September 2000 initiated the International Commission on Intervention and State Sovereignty (ICISS). The Commission presented its work to the international community in December 2001 with the report entitled 'The Responsibility to Protect.'³²⁴ In the report, the Commission addressed the question of how humanitarian intervention could be possible. To this end, it redefined sovereignty, to enable and regulate humanitarian intervention. The ICISS put forth the idea that, sovereign states have a responsibility to protect their own citizens from avoidable catastrophe, viz., from mass murder and rape, from starvation, but that, when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states. By adding the responsibility component to the classical conceptualisation of state sovereignty, the report suggested sovereignty as responsibility understanding as a first measure to prevent conscious acts of violence within states. Secondly, it argued that, rather than a natural right to intervene, there exist for the international community, the responsibilities to prevent, react and rebuild, when states fail to uphold their responsibility, due to either inability or unwillingness.

The relationship of new normative claims to existing norms, may also influence, the likeliness of their influence. This is most clearly true for norms within international law, since the power or persuasiveness of a normative claim in law, is explicitly tied to the 'fit' of that claim, within existing normative frameworks. In this vein, R2P entrepreneurs differentiated the responsibility to protect from the controversial notion of the 'right to intervene', and embedded the concept, within the well-established principle of sovereignty. With this, they aimed to preclude any negative connotation stemming from past practices or arguments in favour of forceful interventions. The initial responses to R2P were mixed, as the report's release coincided with the process of hegemonic law-making regarding terrorism utilizing unilateral power and the collective legitimization function of the UN, in the immediate aftermath of 9/11. Preoccupied with Afghanistan and Iraq, the Bush Administration did not extend support for R2P. Although they did not oppose R2P in general, other Security Council members also voiced concerns about committing to any criteria, and were unwilling to give up the practice of case-by-case decision making, about whether to intervene for humanitarian or any other reasons. The 'responsibility to react' component of R2P constituted the most

³²⁴International Commission on Intervention and State Sovereignty (ICISS), 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty', (Ottawa: International Development Research Corporation, 2001), p.15.<http://responsibilitytoprotect.org/ICISS%20Report.pdf>

cautiously approached aspect as it allowed for humanitarian interventions. The specious invocation of humanitarian reasons for Iraq's invasion fuelled the suspicion of many states, regarding the use of force under R2P framework. In the meantime the Darfur challenge, commonly referred to as a major test case for R2P, stood out as a strong indication of the immediate need to adopt measures for decisive and timely action. Despite setbacks, persistent persuasion efforts of norm leaders, such as then Secretary-General Kofi Annan, paved the way for R2P's institutionalisation, through the machinery of the UN.

The commemorative Summit to mark the momentous sixtieth anniversary of the inception of the United Nations, in 2005, convened the overwhelming magnitude of the UN's sovereign-membership, to commend approbation to the landmark Outcome Document. The upshot of this was broad unanimous concurrence with three conjoined responsibilities that constituted the catchment concept of the Responsibility to Protect, and have come to be commonly averred-to as the 'Three Pillars' of R2P. Outlined in Paragraph#138, was the primordial responsibility of individual sovereign-states, to preclude the transpiring itself, of the designated quartet of mass atrocity criminality, viz., genocide, war crimes, crimes against humanity and ethnic cleansing, and where unable to thwart such occurrences, then to shield their populaces from the deleterious consequences of such virulence.³²⁵ The next encumbrance enlisted in ensuing Paragraph#139, embodies a solemn-pledge on the part of sovereign-states, to assist one another in the discharge of requisite responsibilities, pertaining to civilian protection. And bringing up the draw-bridge in Paragraph#140 was a commitment, to act in unison, in ushering in collective action, in a timely and resolute manner, in the eventuality of any state 'manifestly failing' to protect its demography, from atavistic criminality.

The responsibilities, which may be characterized as lofty expectations, were meant to be an endeavour by votaries, to nudge states into adherence of a higher standard of disposition, transcending the perfunctory iteration of the status quo, in terms of the threshold of state predilections. Emerging in the backdrop of the tempestuous decade of the 1990s, which witnessed abject failures of in-concert actions to stem the ethnic pogrom in Rwanda and the day-light savagery in Srebrenica, the framing of the R2P and its three arch-pillar normative commitments, sought to winnow the breach of prevailing legal responsibilities, already enshrined in global humanitarian instruments and human rights framework, squared-

³²⁵Thomas McCormack, 'Power and Agency in the Human Security Framework', *Cambridge Review of International Affairs*, vol.21, no.1, 2008, p.123.

up against the distressing verity of populaces, imperilled, with rampant and premeditated violent actions. The advent of R2P is also reflection of the infirmities of the traditionally structured conceptual praxis of humanitarian intervention, and is meant to be an improvement in appropriating to the vexing issues of callous inaction or indignant selective action, when confronted with mass murder. The locus of protection transitions the emphasis, from the claims or rights of the intervening entities to the victims of suffering, pining for succour and sustenance.

When examined from an ethical standpoint, the moral frame of state responsibility expanded the remit of corraling agents, primed to preclude or respond to atrocity crimes. When applied to the R2P construct, this expectation of the comity of states is to be comprehended, as not emanating from an intervening entity's action of its own volition and accord, but instead procreating from the quintessential phenomenon of vulnerability. This dichotomy gives rise to a 'complex norm' of the Responsibility to Protect, with trinity features.³²⁶ Firstly, the development of the concept of R2P and its purposeful institutionalization at the World Summit of 2005, as a political rather than a juridical principle, speaks volumes. UN General Assembly Resolutions, by themselves, seldom carry the effect of international law, even when they contend to come across as authoritative explications of legal instruments and the broader regime in place, however, by the drift of the diplomatese coalescing the 2005 Summit, it was indicative of the fact that, the international community was not necessarily intending to give effect, to any juridical obligations. No less than the then UN Secretary General Annan gave vent to this collective sentiment, when in his capacity as a proverbial norm-entrepreneur, he stressed the desire to fortify the existing firmament of legal commitments entailing the protection of innocent civilians across states, rather than to carve-up any new legal formulation, the case-in-point for such requiting burnishing being the UN's Genocide Convention drawn-up more than half a century ago.³²⁷ And needless to state, this conception eloquently articulated by SG Annan, found resonance with a widest spectrum of sovereign-states, who themselves were opposed to the ushering-in and entrenchment of immutable legal commitments in respect of the crisis situations of abhorrent crimes.

³²⁶Philip Cuncliffe, 'Sovereignty and The Politics of Responsibility', in P. Cuncliffe, P., C. Bikerton, C. and A. Gourevitch(eds.), *Politics Without Sovereignty: A Critique of Contemporary International Relations*, (University College London Press: New York, 2007), p. 51.

³²⁷Francois Raffoul, *The Origins of Responsibility*, (Bloomington: Indiana University Press, 2010), p.23.

Secondly, it merits underscoring the ‘directive’, as opposed to ‘prohibitive’ or ‘permissive’, nature of this norm.³²⁸ Even as some would reckon R2P to seek to advance the prohibitive hue of international legal provisions as hemmed-in within documents such as the Genocide Convention, its conceptualised distinct from peer norms, in that, it does not direct conformity to any particular behavioural strand on the part of sovereign states and their responsibilities, instead, demands that state responsibilities serve to engender an emancipating generic spectre in bringing security and a reassuring sense of it to at-risk populations threatened with exterminating violence. This said, a third dimension of R2P, is its indefatigable ‘aspirational’ character. In the course of the life cycle evolution of norms, it’s banal for so-called ‘pivotal events’ to occur; critical junctures of sorts, that galvanize activity propitiously disposed, to issuing a clarion-call for change. As a matter of fact, principles imbued with aspirational fervour find the greatest traction amongst the sovereign constellation, to the extent that they are perceived as legitimate, or if not, then ones that do not divagate, too far. With the unsavoury critical event still fresh in the minds of the powers-that-be at the time, viz., NATO’s punitive campaign against Serbia over Kosovo during 1999, conducted outside of the imprimatur of the UN Security Council that was never to be, the politico-diplomatic consensus at the 2005 World Summit and reflected in the Outcome Document, was an effort to strike a deft balance, between carving up the sovereign-states responsibility to protect endangered populations, and preserving the sanctity of State Sovereignty.

An interesting duality pervades the trajectory of the R2P norm, from the moment of its on-setting mention in the seminal Report of the ICISS, back in 2001, all the way through to its enshrining initiation, in the Outcome Document of 2005. While imbuing the concept with much clarity and coalesce, the process also rendering dilution, in its primary cosmopolitan beliefs. For example, the persistent clamour and weight upon states to appropriate themselves to the third pillar vide varied dossiers of R2P interventions, is inducing many state actors, to endeavour to eschew characterising situations, in terms of their ‘R2P’ nomenclature. Even though it may be held that, it’s the practical actions of states rather than their essays at articulation, which matters moot, nevertheless, such a predicament is also a signifier of the political atrophying of the said norm, at the altar of fraying politico-diplomatic consensus, although this by no means is a harbinger to the eventual denouement of the norm, just yet.

³²⁸Toni Erskine, ‘Moral Agents of Protection and Supplementary Responsibilities to Protect’, In A. Bellamy & T. Dunne (eds.), *The Oxford Handbook of the Responsibility to Protect*, (Oxford: Oxford University Press, 2016), p.167.

UNPACKING THE RESPONSIBILITY TO PROTECT (R2P) AS A NORM

As a political principle, R2P is primed and ordained to sub-serve triumvirate functions, viz., to accord legitimacy to a transition of expectations, in terms of the international comity of nations' perceptions about rampant atrocities and their recurrent occurrences; to solicit political resolve in good measure and to institutive disincentives in respect of glaring inaction; and to galvanize vesting, in the establishment of requisite prevention and response mechanisms.³²⁹ The fact that the R2P principle delineates not one, but a set of prescriptions upon states, viz., to shield populations from mass crimes, to facilitate peers in living up to their responsibilities, and to convene in-concert to respond efficaciously where protection mechanisms have come a cropper, renders it complex, from the standpoint of the normative principle's facticity, determinable and adjudicated at varied tiers, and spanning eclectic conduct. It engenders a condition where the assail of a particular dimension of R2P, viz., the delinquency or incapacity of a sovereign dispensation to protect its demography, unleashes adherence to the corollary component of R2P, viz., purposeful intervention by sovereign states on behalf of the international community, in pursuance of ameliorating action. Such a characterization opens the norm up to contestation, over whether one pillar of the R2P framework, carries precedence over another; this despite the UNSG's disabusing avow, of the co-equal footing of all three pillars, underpinning the R2P norm. The complexity of the R2P framework finds further accretion, in the ironical fact that, apprehensions and scepticism amongst states, about the third dimension of interventionist involvement becoming a slippery slope of sorts, is compensated, by such states' wilful strengthening of the preceding twin pillars of the R2P strategy, thereby making the norm robust.

The R2P norm also stands-out, in comparative relation to other norms, as in the proscriptions on torture and allied instruments pursuing accountability for criminality, for the nature and threshold of injunction for collective action. While still requiring states to internalize and execute the norm's injunctions, R2P entails the accomplishment of collective concurrence and responsive action in-concert. However, this is not to imply that a one-size-fits-all generic approach should realise, in response to every instance of protection failure, in the anyways contentious domain of militarized intervention, borne out of course by reference within Paragraph 139 of the Outcome Document, to a "case-by-case basis" for determining

³²⁹Adrian Gallagher, 'What Constitutes a 'Manifest Failing'? : Ambiguous and Inconsistent Terminology and the Responsibility to Protect', *International Relations*, vol. 28, 2014, p. 429.

actions. The actionable third pillar within R2P is a call to duty, for sovereign states in the international realm, to observe for and designate mass atrocity crimes when they transpire or are about to befall, and to cogitate and brainstorm, on the manner by which varied level actors can effectively react. Nothing could be more misplaced, than to endeavour to opine on the strength of R2P, by attempting to find favour in consistency of pattern, where one seldom exists, as international responses to mass atrocity crimes need not be a one-trick pony, but can embrace variegated tools and instruments, in subduing fraught situations within troubled target countries. Similarly, consistency of approach is also not feasible, since such response mechanisms permeate the inveterately ensconced collective security regime within international organizations, and are often the function of structural mechanics and political dynamics militating at the UN Security Council (the authoritative body for collective militarized actions). From the action scuppering element of VETO wielded by the privileged permanent members around the Council's horseshoe, to the circumscribed latitude for sovereign-members to actualize forces in support of mission mandates, to the general reluctance of member-states to inject themselves into conflict hotspots to which they partake in some form, or where they perceive a popular pushback to their envisaged insertion; they all constitute potential stymies. This said, the Security Council impede can also materialize on account of genuine disagreements among membership, about the requisite tenor of deploying specific instrumentalities, most notably so in instances, where the appropriation of a R2P response, is an open-and-shut case. Nevertheless, R2P action-strategies so devised are invariably the function of considerations of ethical tenets, such as the 'reasonable prospects of success' and the 'do no harm' propositions respectively, which further contribute to differentiated executions and distinct outcomes per se. What is moot for an appraisal of the R2P norm's resilience is not whether it conjured up a militarized appropriation to the crisis challenge at hand, but whether the response mechanism was legitimate in relation to competitive actionable choices on hand.

DEBATING THE RESPONSIBILITY TO PROTECT'S (R2P) NORMATIVE STRENGTH

There is hardly any gainsaying that abominable manifestations of virulence, whether perpetrated by those at the helm of statist dispensations or the consequence of degenerative conditions within fragile and fraught state structures, are recurrent through the 21st century, spanning geographical coordinates and embracing the full spectrum of dimensions to atavistic violence. Amongst the slew of threats on the horizon remains the ever increasing incidence of

mass displacement of civilians, both in terms of the extrication of individuals across sovereign landscapes but also the intensifying proportions of those, strewn within the territorial frontiers of war-torn states; a phenomenon at its vexing apogee, since the end of the Second World War.³³⁰ What accentuates matters is that not only have a good measure of sovereign-states not signed-on to the bandwagon of signatories to coveted international legal instruments such as the Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Conventions and the Rome Statute of the International Criminal Court, respectively, but that the proclivity for wilful disregard and flagrant remiss of rudimentary human rights obligations on the part of members, particularly in situations where alibis and ruses can be found to rationalize hideous acts on grounds of unprecedented security threats or political crises, has metastasized.

While the foregoing appears to seriously impugn the framework of R2P, one cannot but underscore the declaratory advance accomplished by the norm, in a succinct period of elapse. Not only has the R2P norm found constant affirmation and reaffirmation by national helm-ships from time to time, this has been further fortified by deliberations within the portals of inter-governmental bodies at the precincts of the UN, both as a principle and in specific consideration of country particular situations, such that well over fifty separate Resolutions have passed muster with regard to the responsibility to protect, often leaning on statist dispensations, in having them be sentient of their duties and obligations, even traversing so far as to commission peacekeeping operations that expressly buttress national authorities in their imperative to a responsibility to protect. For example, the UN General Assembly has convened as many as eight annualized editions of the Informal Interactive Dialogues, in respect of the Responsibility-to-Protect, till date, whilst the Human Rights Council for its part, has adopted no less than twenty-five Resolutions bringing incandescence to the R2P framework, across its seminal thematic resolution of 2016, to country specific case considerations, pertaining to R2P response mechanisms. Notwithstanding, resolutions have tended to be anodyne and feckless in the face of concurrence of circumstances, where categorical vestiges of mass atrocities have persisted, but, where strategic pull factors have operated, to scythe opportunities, for collective in-concert action.

The scholarly corpus of literature stands hived along the axis of adherents who perceive the R2P framework proffered for within the World Summit Outcome Document

³³⁰Anne Peters, 'Humanity as the A and Ω of Sovereignty', *European Journal of International Law(EJIL)*, vol. 20, 2009, pp. 537-538.

(WSOD) of 2005 as being strikingly assertive, and potentially challenging state authority and norms circumscribing the use of force, juxtaposed against those, who espouse the provisioning of R2P as smitten with dearth of initiative, and lacking the phalanx of legal-structural reforms, to preclude mass atrocity crimes and to respond to them. The duality inherent in the discourse stems from the methodological divergences in terms of establishing lingua and praxis as epochal to the strength of the norm over its facticity, i.e., the extent to which the content of R2P serves, as guide for action.

ASSESSING THE RESPONSIBILITY TO PROTECT'S (R2P) ROBUSTNESS

Given the complex nature of the R2P norm, an assessment of its robustness and resilience cannot be situated in evaluations of its magnitude of ratification and scope of compliance, alone, in view of the nuanced intermediating locus of R2P enjoinders and the contingency upon collectivized action, for implementation of the third pillar. Broadly speaking, the R2P norm has enjoyed facile validity, having hardly encountered resistance at national or international levels since inception in 2005. Mediums such as the Annual Reports from the UN Secretary General, coupled with the thrust of debates emerging from the annualized Informal Interactive Dialogues, and support from statist dispensations, have facilitated a thorough and threadbare examination of the R2P concept. The Annual Reports of the UNSG have enabled to suss for signals in terms of decoding the unfolding of mass crimes within the UN paraphernalia, besides lending much vaunted clarity in terms of the synergetic and collaborative contribution of regional and sub-regional entities in the discharge of R2P obligations, and it's been gratifying to note the extent to which sovereign statements at dialogue forums have sought to engage with the UNSG's reports. What has been unmistakable is that, the misgivings expressed by member-states about the alleged ambiguity and nebulosity of the R2P construct, has progressively morphed into deepened concurrence over its core aspects, most notably the vesting of the responsibility for civilian protection, principally, within the remit of national leaderships and their regimes, and conflates with prevention, at that. Furthermore, consensus has also coalesced around an acceptance and appreciation that, the milieu of development cooperation has the potential to decipher early warning harbingers, which in turn aid and assist in the deployment of timely and decisive response actions, bringing the full complement of politico-diplomatic tools to bear, swaddled in the sentiment that, the use of force should be the last recourse.

Even the argument often adduced, in terming the normativity of R2P, as an innately Western concept, is a red-herring. The largest swathe of countries spanning the globe have not

only embraced the R2P and its triad pillars, but have also commenced articulating the merits of the principle as also the process methodology for its implementation from their respective perspectives. If anything, only a small set of holdout countries remain, viz., the likes of Cuba, Nicaragua, Venezuela, Sudan and the ilk, proverbial outliers who have constantly railed against the R2P framework, operating largely from the vantage-point of their ideological predisposition. Even in terms of examining the stances of specific countries, the tale is revealing. China for example, has come a long way since its 2009 address to the UNGA discussion, which betrayed its spooked concerns, over how R2P would trample upon state sovereignty, such that, by 2014, it was characterizing the same R2P, as “prudential norm”, and cogently advocating for its embrace.³³¹ India, which has often showcased itself as the vox-populi for the so-called ‘Global South’ swathe of developing nations, earlier harboured a “cautious go-ahead” posture vis-à-vis R2P, however, in its more recent appropriation on the theme, has pouted constructively on R2P, with creative suggestions to connect it with larger missions at peace-building and pre-emptive conflict prevention.³³² Similarly Egypt, prominent in infamy, for disposing as a strident opponent of R2P in times bygone, has also discernibly mutated its public positioning on the contentious issue, since.³³³

It must be acknowledged that certain member-states have attempted sleight-of-hand gambits at extending the scope of the R2P construct, as to legitimize their less than above board actions, as has been the case with Russia in its feud with Georgia over Abkhazia and South Ossetia regions,³³⁴ but also France, whose endeavour at extrapolation of the R2P principle, was premised and predicated on the humanitarian beneficence made imperative, for marooned civilians in Myanmar, after the ravenous impact of Cyclone Nargis, both claims of which, met with demur.³³⁵ Nevertheless, these claims and the discussions that followed in their wake, served to clarify R2P in all its conceptual strands, bestowing greater consensus on the principle and its operationalization. The UN membership since has articulated its normative and operative commitment to the R2P construct, in “narrow but deep approach”

³³¹Government of China, ‘Statement By the People’s Republic of China to the Informal Interactive Dialogue of the UN General Assembly on the Responsibility to Protect’, September 8, 2014.

<http://www.globalr2p.org/media/files/peoples-republic-of-china.pdf>. (Accessed on 27 March 2019)

³³²Government of India, ‘Statement by Amb.Asoke K. Mukerji to the Informal Interactive Dialogue of the UN General Assembly on the Responsibility to Protect’, September 8,

2015.<http://www.globalr2p.org/media/files/india-1.pdf>. (Accessed on 27 March 2019)

³³³Government of Egypt, Statement of the Arab Republic of Egypt, at the Informal Interactive Dialogue of the General Assembly on the Responsibility to Protect, September 8, 2015.

<http://www.globalr2p.org/media/files/egypt-1.pdf>. (Accessed on 27 March 2019)

³³⁴CR2P, ‘Georgia-Russia Crisis and R2P’, 2008. <http://www.responsibilitytoprotect.org/index.php/crises/178-other-R2P-concerns/2749-the-crisis-in-georgia-russia>, (Accessed on 27 March 2019)

³³⁵Claudia Parsons, France urges U.N. Security Council to act on Myanmar Cyclone, Reuters, 7 May 2008.

mode, a characterization commended by the Secretary General's maiden Special Adviser on R2P, Rt. Hon. Edward Luck, that speaks to the norm's pertinence to the quadrant of international criminal manifestations, as also its response mechanism implementation through multi-vectored measures. However, all of the above and more, remains subject to twin qualifiers, viz., that the centre of gravity should be weighted in favour of domestic civilian protection by the states in the crosshairs of conflict and in favour of such states' capacity building in pursuance of such protection, as also driven by safeguards to indemnify against an expansive interpretation of the third-pillar impulse for actionable implementation.

As regards the first of the caveats foregoing, matters concerning a purported stretching of normative mandate inherent came to a head in the wake of the UN sanctioned multinational action against Libya in 2011, which was criticised ensuing, for extending all the way to purging Qaddafi from the scene, which led to albeit exploratory consideration of the Brasilia emanated proposal of 'Responsibility While Protecting' (RwP).³³⁶Feverish contention, over the rectitude of the R2P's third pillar that invokes military action, has continued unabatedly permeating, through the UN convened Informal Interactive Dialogues over R2P, with the Libya case often forked-up, in mention. These differences and others are reckoned, to have undercut the push for a R2P specific Resolution, to be adopted during 2015, on the occasion of a decade since the World Summit Outcome Document's (WSODs) adoption; however, failed to make headway as member-states demanded for insertion of the formulation of "responsible" implementation of R2P, particularly the third pillar of it, with the requirement for unequivocal mission mandates and explicit procedures and operational protocols, to be delineated, at the outset of UNSC authorized uses of force, itself.

The second of the caveats emerges from the belief that, support for the norm of R2P and its progressive validation, has happened at the altar of state-centricity, and not of its cosmopolitan streak. Given that the move to develop the principled framework of Responsibility to Protect had its imputing genesis in the unsavoury experiences of multiple human rights crises, that met with chequered responses from the international community, the blue-ribbon International Commission on Intervention and State Sovereignty (ICISS) threw its furnished Report in 2001, sought to reflect on the glaring omissions and commissions of genocide related responses at civilian protection. The intellectual heavy-lifting was located

³³⁶Gareth Evans notes that Brazil, Russia, India and South Africa were the leading states criticising NATO-led implementation. Their complaints have not been about the initial military response . . . but what came after, when it became rapidly apparent that the three permanent member states driving the intervention (the US, UK and France, or 'P3') would settle for nothing less than regime change, and do whatever it took to achieve that.

within the wider remit of ‘human security’, and advocated by the norm-entrepreneurial likes of then Minister of Foreign Affairs of Canada, Rt. Hon. Lloyd Axworthy, erstwhile Foreign Minister of Australia, Rt. Hon. Gareth Evans, and Former UN Under-Secretary General and UNSG Special Envoy for Somalia, Mr. Mohammad Sahnoun, besides others. This paradigmatic approach situated the universalised individual and his or her security, forged on the broader canvass of multifaceted expression and understanding of ‘human security’ within the global societal milieu, a contrasting transition from the traditionally dominant paradigm of statist security and allied securitized conception, anchored in the considered belief that globalization and its varied manifestations, has rendered sovereign territorialism, eroded, in the frame of interconnected and interdependent interchange.³³⁷

Despite efforts by Commissioners on the ICISS body, to disavow the notion that, human security had somehow marginalized the fulcrum underpinning of state sovereignty, the ostensible cosmopolitan genesis of the R2P norm, made sovereign rights and the privilege vested in it, incumbent and contingent, upon respect for human rights, evidence in the protection of citizenry. Besides, a number of states have availed the opportunity of the UN’s annual Informal Interactive Dialogues on R2P, to voice their strong endorsement of the primacy of national dispensations in the primordial implementation of the R2P framework, as also the imperative for states in the extant, to do their utmost in buffeting such states of concern, with adequate statist wherewithal, not to mention the reinforcement of sovereignty, and the acknowledgement that, there could be differentiated paths in terms of response mechanisms, all headed for the same single destination.

While this does not represent a dysfunction of the norm of R2P itself, it does point to the ‘constructive contestation’ process, by which the R2P norm, is being chaperoned. The dint of UN member-states, particularly the influential but usual suspects such as China, asserting the significance of states in the task of protection over cosmopolitan notions of conditional sovereignty, speaks to the growing sense of disquiet about casting away operationalization of militaristic measures under the third pillar implementation of R2P, to a supra-national authority, or an entity, outside of the global constellation of sovereign-states. The thrust of emphasis is on situating the sovereign-state at the centre of activity in terms of upholding its primary responsibility at citizenry protection, failing which, sovereign states as

³³⁷Ramesh Thakur, ‘Intervention, Sovereignty, and the Responsibility to Protect’, in R. Thakur, A. Cooper and J. English (eds.), *International Commissions and the Power of Ideas*, (New York: United Nations University Press, 2005), p.187.

peers ought to step-in to an auxiliary assistance role in strategic capacitation of that particular sovereign-state; the putative ‘bottom-up’ approach, embodied in the First R2P Report of the UN Secretary General.

MIXED DEGREES OF FACTICITY

Since the inception of the enshrining of the ‘Responsibility to Protect’ concept from 2005, the multitude of the norm’s counsellors and canvassers, viz., the UN Secretary Generals Kofi Annan and Ban ki-Moon respectively, their designated ‘Special Advisers’ on the issue, sovereign members constituting the Group of Friends concerning R2P, as also the welter of non-governmental and civil-society organizations, have voiced calls in support of a ‘bottom-up’ approach. In terms of the methodology adopted by such purported change-agents, generic and normatively onerous debates, girdling around the dynamics and mechanics of state sovereignty, have been dispensed with and shunned, in favour of deliberation, on how to intricately weave the R2P norm, within the muscle memory response structure of myriad actors and institutional entities.

The emphasis on tangible operationalization has paid dividends, in arresting the inevitable descend into radicalised asperities of contestation of the R2P norm, most notably its hot-button third-pillar. With a view to burnishing institutional wherewithal and sprucing-up the response apparatus within national dispensations, the assigning of a points-person focal point in pursuance of coordinated and targeted embellishment of the mass atrocity crimes prevention mechanism at domestic level, has been insisted upon.³³⁸ The designation of individuals within such capacities, are aimed at improving adherence with and conformity to, the R2P and its first-pillar. Key metrics, that help assess progress at national levels of jurisdiction, encompass compliance, with commissioning of a structured exercise at national risk assessment; inking and ratifying global human rights and humanitarian law regimes; and enacting legal remedies within respective firmaments, which appropriate themselves to marginalization and discrimination. Notwithstanding, the drive to establish genocide prevention mechanisms within sovereign states has enabled closer coordination between state and non-state actors with a view to improving statist capabilities, both within and in the extant of sovereign frontiers. Pithily put, the R2P’s middle pillar has made rapid advancement, such that, it is chaperoning states’ tenor towards developmental assistance and diplomacy.

³³⁸Since 2010, in excess of sixty states – almost a third of the UN membership - have appointed national focal points. See the updated complete list at <http://www.globalr2p.org>. (Accessed 15 October 2019)

However, when appraised on the touchstone of facticity, the R2P in terms of its contentious third pillar of militarized action, torches off vexing questions. The extent to which the case can be made for enjoined dimension of the norm is for states external to the sovereign in question, to identify warning signs of mass violence, process the situation through its applicatory discourse track, and determine as to what form of intervention would behave, involving the spread-sheet of actors, both state and non-state, and militating at three tiered levels of national, regional and global.³³⁹ The maiden Report of the UN Secretary General pertaining to R2P elucidates on the beholding promise of non-militarized options such as crisis diplomacy, humanitarian activities and the range of mediatory practices at negotiation, which can be integral to the global community's response initiative. Yet, debate persists over the three pillared R2P in terms of the equations inter se, and the precise threshold at which the responsibilities of the international community towards actualising the third pillar stand triggered.

THE RESPONSIBILITY TO PROTECT (R2P) AND ITS THREE PILLARS: MUTUALLY REINFORCING OR SEQUENTIAL?

The World Summit Outcome Document was devoid of any pillared description of the concept of the Responsibility to Protect. If anything, the construction of the R2P principle in terms of its three distinct yet interrelated strands or pillars was an improvised design undertaken by the inaugural Special Adviser to the UN Secretary General on R2P, and figured centrally in the 2009 Report of the Secretary General.³⁴⁰ Despite the laggard entry of the pillared design, it has catalysed discussion around it, and gratifying enough, has engendered notable consensus over it. The original three pillared scheme conceived of them, as coequals and mutually reinforcing, and certainly non-sequential. When a state solicits international assistance towards fulfilling its protection obligations, or even where exigent protection capacity is in the making, it does not diminish or detract from the state's principal responsibility at tending to the arduous task itself. The general drift of discussions within the portals of the UN General Assembly have exhibited the desire on the part of sovereign member-states to create a pecking order for R2P actualization, wherein the responsibility for civilian protection is *prima donna* upon the state concerned, and is to be discharged

³³⁹Nicole Deitelhoff, and Lisbeth Zimmerman, 'Things We Lost in the Fire: How Different Types of Contestation Affect the Validity of International Norms', PRIF Working Paper 18. Frankfurt: Peace Research Institute of Frankfurt, 2013).http://www.ssoar.info/ssoar/bitstream/handle/document/45520/ssoar-2013-deitelhoff_et_al-Things_we_lost_in_the_fire.pdf?sequence=1 (Accessed on 18 August, 2019)

³⁴⁰Edward Luck, 'Building a Norm: The Responsibility to Protect Experience', in Robert Rotberg (ed.) *Mass Atrocity Crimes: Preventing Future Outrages*, (Brookings Institution Press, Washington, DC, 2010), p. 112.

domestically within national jurisdictions of authority, whilst the latitude for international community protection is to be secondary, and only in cases of culpable delinquency or crass incapability of the state concerned. This has impelled states to oppose the conception of the three pillars of R2P, as being “equal and mutually reinforcing.”³⁴¹ Similarly, interpretation issues also bedevil discussion, wherein certain stakeholders have tended to conflate the third pillar of international community responsibility, with deployment of militaristic measures alone, missing out on the fact that, the third pillar enjoining responsibility, is reposed of a spectrum of potential activities, for the international community to chew-the-cud over, with recourse to militarized actions being truly in the realm of the last of resorts.

The contestation around facticity of the R2P norms also revolves around conditions and situations that activate the global community’s duty to intervene in assisting response. While the Report of the International Commission on Intervention and State Sovereignty (ICISS) called for obligations in reference to “large scale loss of life”, by the time we arrived at the Outcome Document of 2005, this expansive generic formulation was qualitatively pruned to include four specified mass atrocity crimes, yet, the contentious debate over country specific situations did not cease, implying that, the overcoming of impreciseness does not put paid to differences over the norm’s elements of application. Contestations over framing conditions under which R2P can actualize, renders fault-lines, between one group of states, who pronounce the widespread and systematized human rights pillaging as constituting a *casus belli*, while the other set of sovereign states would essentially demur, and prevent the situation from being characterized, to have reached the threshold, warranting a Chapter VII UN Security Council Resolution in coercive enforcement.

The moot consideration in evaluating and concluding on the R2P’s prospective resilience are contingent upon its three dimensions; the political, directive and aspirational character of the norm. The politicized and aspirational elements of the norm render it susceptible, to cohabiting cases of action and inaction, whilst the directive component of the norm does not specify any particular course of action. Closely wedded to ascertaining for norm robustness is also the temporal quality of the norm under scrutiny. A decade and half since inception, it begs examination, as to whether the norm has made its entrepreneurs and stakeholders reach closer to the norm’s envisaged trajectory, and if yes, how close is the alignment of prescription and action, but equally whether, the delineation of the norm, has

³⁴¹Jennifer Welsh, ‘Norm Robustness and the Responsibility to Protect’, *Journal of Global Security Studies*, vol.4, no.1, 2019, p. 63-64.

metamorphosed thought processes. The concept of ‘responsibility to protect’ is treated differently, in the four documents associated with its genesis, viz., the Report of the Commission on Intervention and State Sovereignty and Intervention (herein after ‘ICISS’); the High-Level Panel Report (herein after ‘HLPR’) of 2004; the Report of the Secretary-General (herein after ‘RSG’) in 2005, and the World Summit Outcome Document (herein after WSOD) of 2005.

THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY (ICISS)

The most comprehensive treatment of the concept was offered by the Commission on Intervention and State Sovereignty. The commission essentially developed the concept of responsibility to protect to solve the legal and policy dilemmas of humanitarian interventions. The commission focused on the relationship between sovereignty and intervention, specifically on how the international community should respond to a Rwanda, to a Srebrenica-to gross and systematic violations of human rights that offended every precept of our common humanity, and if humanitarian intervention is indeed, an unacceptable assault on sovereignty. The commission proposed dealing with this problem, by re-characterizing sovereignty, i.e., by conceiving of sovereignty as ‘responsibility’ rather than as ‘control’. The commission thus used a rhetorical trick, in so far as it flipped the coin, shifting the emphasis from a politically and legally undesirable right to intervene for humanitarian purposes, to the less confrontational idea of a responsibility to protect.

The commission tried to distinguish the idea of responsibility to protect from the concept of humanitarian intervention in three ways. The report emphasized, first of all, that responsibility to protect looks at intervention from a different perspective, than the doctrine of humanitarian intervention. The commission stressed that, the responsibility to protect addresses the dilemma of intervention from the perspective of the needs of those, who seek or need support (e.g., communities in need of protection from genocide, mass killing, ethnic cleansing, rape, or mass starvation), rather than from the interests and perspectives of those who carry out such action (entities asserting the ‘right to intervene’).³⁴² Second, the commission sought to bridge the gap between intervention and sovereignty, by introducing a complementary concept of responsibility, under which responsibility is shared by the national state and the broader international community. The commission recognised that the primary

³⁴²Michael Barnett, ‘Humanitarianism Transformed’, *Perspectives on Politics*, vol.3, no.4, 2005, p.725.

responsibility to protect resides with the state whose peoples are directly affected by conflict or massive human rights abuses and that only if the concerned state in question, is whether unable or unwilling to fulfil this responsibility, or is itself the perpetrator, that it becomes the responsibility of the international community to act in its place. Third, the commission expanded the conceptual parameters of the notion of intervention, declaring that an effective response to mass atrocities requires not only reaction, but more so on-going engagement to prevent conflict and rebuild after the event. The commission developed a multi-phased conception of responsibility, based on the distinction between a responsibility to prevent and react and the responsibility to rebuild. This conception of responsibility implies that, if military intervention action is taken, because of a breakdown or abdication of a state's own capacity and authority in discharging its responsibility to protect, then there should be a genuine commitment to helping to build a durable peace and promoting good governance and sustainable development.

The move from a right to intervene to a responsibility to protect was justified, by the commission, on the basis of a distinction, between a state's internal and external responsibility. The commission recognized that, states' authorities are responsible for the safety, life, and of their citizens, and that they are also responsible to citizens internally. However, the commission stressed that, at the same time, states bear an external responsibility with regard international community, through the United Nations. The commission acknowledged that, violations of this dual responsibility could ultimately require action, by the broader community of states to support populations that are in jeopardy or under serious threat. It identified three circumstances in which this 'residual responsibility' of the broader community states would stand activated; (1) when a particular state is clearly either unwilling or unable to fulfil its responsibility to protect; (2) when a particular state, is itself the actual perpetrator of crimes or atrocities; (3) where people living outside a particular state are directly threatened by actions taking place there. The report of the commission managed to gather broad support because it avoided taking a final stance on the question of the legality/legitimacy of unauthorized interventions.³⁴³

The invention of the notion of responsibility to protect, assisted in this effort, by leaving flexible choice of means (e.g., humanitarian assistance, economic assistance, military engagement), to exercise that responsibility. The commission made it clear that the Security

³⁴³Alex Bellamy, 'Mainstreaming the Responsibility to Protect in the United Nations System: Dilemmas, Challenges and Opportunities', *Global Responsibility to Protect*, vol. 5, no. 2, 2013, p. 159.

Council should be the first port of call on any matter relating to military intervention for human protection purposes, but it did not categorically exclude the possibility that the responsibility to protect might ultimately be assumed by the General Assembly, regional organizations, or coalitions states, if and when, the Security Council fails to act. The commission left open, whether and under what circumstances, an intervention not authorized by the Security Council or the General Assembly would be valid in legal terms. Nevertheless, it advised that, when the Council fails to discharge what the commission would regard as its responsibility to protect, a balancing assessment should be made, as to where the most harm lies; as in the damage to international order if the Security Council is bypassed or in the damage to that order, if human beings are massacred. Moreover, the commission developed five criteria of legitimacy for interventions, which were deemed to apply, to the Security Council and UN member states, viz., just cause, right intention, last resort, proportionality of means, and a reasonable prospect of success.

THE HIGH LEVEL PANEL (HLP) REPORT

The debate about the concept of responsibility to protect took a new turn in the High Level Panel Report, where it was directly related to institutional reform of the United Nations. The purported scope of the responsibility to protect remained unclear, within the report. Although the panel recognized that, each individual state has a special duty vis-à-vis its citizens, it spoke at the same time of a collective responsibility to protect, of every state, when it comes to people suffering from avoidable catastrophes such as mass murder, rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease.

The reference to the responsibility of every state, created the latitude for different interpretations. It could be read as a simple reminder of the erga omnes nature of the international obligations, through cases of genocide, torture, and grave breaches of the Geneva Convention that gives rise to the responsibility to protect. However, the text also allows for a broader reading that endorses a wider concept of responsibility, under which the responsibility of the host state shifts to every other state, where the former is unwilling or unable to act. Such a reading would significantly extend the existing parameters of the law of state responsibility. It would detach the idea of responsibility of a sovereign from the traditional criteria of nationality or territoriality and establish a multi-layered system of responsibility, in which the primary responsibility of the state vis-a-vis its citizens is complemented by a residual responsibility of all sovereign governments vis-a-vis human catastrophes.

One of the particularities of the High-Level Panel Report is the linkage of its vision of shared responsibility, directly to the United Nations. The idea of responsibility to protect became part and parcel of the vocabulary of UN reform. The Panel associated the concept of collective responsibility, in particular, with action by the Security Council. It reiterated that, the Security has not only the authority, but also a certain responsibility to take action to combat humanitarian crises.³⁴⁴ The report stated that the Security Council and the wider international community have come to accept that, under Chapter VII and in pursuit of the emerging norm of a collective responsibility to protect, the Council can always authorize military action to redress catastrophic internal wrongs, if it is prepared to declare that, the situation constitutes a threat to international peace and security. This passage was meant as an incentive for Council to act responsibly by giving the UN collective security system the wherewithal to work effectively, in all cases of humanitarian crises. The panel combined this appeal to responsibility, with a plea for a more transparent and responsible use of the right of the Veto, by the permanent members of the Security Council, urging them in particular, to pledge themselves in refraining from the use of the veto, in cases of genocide and large-scale human rights abuses. This goal was accompanied by an express effort to channel international intervention through the Security Council. The panel took the position that UN members must resort to the collective security system, in all cases of military intervention, including operations out by regional organizations.

Unlike the Commission on Intervention and State Sovereignty, the panel did not envisage that an international responsibility to protect could be mounted, by coalitions of the able and willing, and/or regional organizations, in the absence of Security authorization. The report stressed that, the emerging norm of a collective international responsibility to protect, was only exercisable by the Security Council, and only if military intervention was at stake. This approach was guided by the ambition of the drafters' report, to reinforce the UN system, after the 2003 intervention in Iraq. The panel's treatment of collective security culminated, in the identification of the five criteria of legitimacy, for the use of force, viz., the seriousness of threat, proper purpose, last resort, proportional means, and balance of consequences.³⁴⁵ Interestingly, in establishing these legitimacy criteria, the panel did not contemplate solving the impasse of unauthorized interventions, but intended to enhance the effectiveness of the

³⁴⁴See the Report of the 'High Level Panel on Threats Challenges and Change, A More Secure World: Our Shared Responsibility', United Nations, 2004, p.11.

³⁴⁵Nigel White, 'The Will and Authority of the Security Council after Iraq', *Leiden Journal of International Law*, vol. 17, 2004, p. 645.

global collective security system. The criteria were primarily addressed to the Security Council and formulated to guide the Council in its decision, whether to authorize or endorse the use of military force.

THE REPORT OF THE SECRETARY GENERAL (RSG)

The tensions inherent in the notion of responsibility to protect are reflected in the subsequent Report of the Secretary-General on Larger Freedom. The Report did not simply endorse the findings of an emerging norm of a collective responsibility to protect, but emphasized that it was aware of the sensitivities involved. The concept was removed from the section on the use of force, and placed in the section, dealing with the freedom to living in dignity, so as to detach the idea of responsibility, from an automatic equation of armed force. The responsibility was no longer viewed as a surrogate for humanitarian intervention, but as a strategy to promote the commitment of all nations to the rule of law and human security, in a manner that, blended the imperative for collective action with a shared vision for development. Consequently, the Secretary-General placed stronger stress on the responsibility to protect to be accomplished, through peaceful means.

In the report, the international community's residual responsibility to protect became a responsibility to deploy diplomatic, humanitarian and other methods to protect the human rights and well-being of civilian populations. Use of force was described as the ultima ratio measure, which if taken, had to be carried out by none other, than the UN Security Council. The notion of responsibility to protect was used to constrain, rather than to enable the use of force. When associated with armed force, the responsibility to protect was not viewed as a means to establish alternatives to the UN Security Council, but as an instrument to make it work better. Thus, from a legal point of view, there was no substantive change with respect to the treatment of humanitarian interventions. The Report of the Secretary General did not explicitly rule out the possibility of unilateral action in any circumstances, including when the Veto is used to block action in cases of genocide. Nevertheless, the general focus of the report on the Council and the silence of the Secretary General, upon alternative means for carrying out interventions for purposes of human protection, indicated a general reluctance to accept military action, without the Security Council's authorization.

THE OUTCOME DOCUMENT AT THE WORLD SUMMIT 2005

The different conceptions of the notion of responsibility to protect finally converged, in the drafting process of the Outcome Document of the 2005 World Summit. Both the form

and contours of the concept were intensively debated, before the high-level plenary meeting. Several states such as Algeria, Belarus, Cuba, Egypt, Iran, Pakistan, the Russian Federation, and Venezuela, expressed reservations about including the responsibility to protect in the Outcome Document. Some delegations argued that, the concept was too vague and open to abuse. Others doubted, as to whether it was compatible with the Charter, noting that there is no shared responsibility in international law, outside of the responsibility of a state to protect its own citizens, and the institutional mandate of the United Nations to safeguard international peace and security. Still others questioned the legal nature of the responsibility to protect and sought to frame the idea, in terms of a moral principle. The U.S. in particular was categorical in its refusal to accept that either the nations as a whole or the Security Council or individual states have an obligation under international law, proposing that the idea of national responsibility to protect, be defined in the form of a moral responsibility of national community, to use appropriate diplomatic, economic, humanitarian peaceful means, including under Chapters VI and VIII of the Charter to help protect populations from atrocities.³⁴⁶

The final text of the Outcome Document is a compromise solution that seeks to bridge different positions. States avoided reducing the idea of responsibility to protect to a purely moral concept. However, paragraphs 138 and 139 of the Outcome Document represent a rather curious mixture of political and legal considerations, which reflects the continuing division and confusion about the meaning of the concept. The two paragraphs are drafted in a discursive fashion, which is typical of political rations. The clearest commitment is contained in paragraph 138. It opens with the straight forward statement that each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The passage on the responsibility of the international community is framed in more cautious terms. The Outcome Document relied implicitly on the distinction between the responsibility to prevent, the responsibility to react, and the responsibility to rebuild made by the ICISS, even though each of these dimensions enjoys varying degrees of support.

The idea of responsibility to prevent is phased in terms of a general appeal to the international community to assist states and the UN in the prevention of mass atrocity crimes. The responsibility to react is taken up plainly and unconditionally that, the international community through the United Nations, also has the responsibility to use

³⁴⁶Theresa Reinhold, 'The Responsibility to Protect—Much Ado About Nothing?', *Review of International Studies*, vol. 36, 2010, p. 55, 67.

appropriate diplomatic, humanitarian and allied peaceful means, in accordance with Chapters VI and VII of the UN Charter to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This sentence suggests that the idea of responsibility to react enjoys some acceptance with regard to measures falling short of the express use of force. However, the Outcome Document assumes a more reserved stance vis-à-vis the responsibility to take collective action through the Security Council under Chapter VII. A reaffirmation of preparedness to take action is suggestive of voluntary rather than any mandated engagement and that to on a case by case basis through the Council, which stands in contrast to any systematized duty on the part of the international community. These conditions distinguish the tenor of the Outcome Document from the responsibility driven approach of the High Level Panel towards collective security and appears to reflect the views of those states apprehensive of the proposition that the Charter creates any kind of legal obligation for Council members to support enforcement action in the case of mass atrocities. This said, the idea of guidelines for authorization and endorsement of the use of force by the Council was dropped altogether.

More fundamentally, the text of the Outcome Document does not firmly state that UN collective security action, constitutes the only option for responding to mass atrocity crimes, through the use of force. Some states claimed that collective security action under the umbrella of the responsibility should not preclude action, absent Security Council authorization. The US asked for no foreclosure of the option of unauthorized interventions, noting that there would be cases involving humanitarian catastrophes for which there might be a legitimate basis to act in self-defence. While not excluding this option, the Outcome Document leaves the door ajar through its case-by-case vision of collective security and a qualified commitment to act in cooperation with regional organizations.

Importantly, the Outcome Document places the entire concept of responsibility, under a final additional proviso. The heads of state and government stressed the need for the UN General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, keeping in mind the principles of the Charter and international law. This language was inserted in the text, in deference to states that felt that responsibility to protect was not yet sufficiently clear in conceptual terms, and needed further consideration in the General Assembly, before implementation. The express reference to the need for conformity, with the principles Charter and international law creates further ambiguity. It almost seems to suggest

that drafters of the Outcome Document had some doubts, whether their own proposal was consistent with international law and the Charter. This said, the concept of responsibility to rebuild, received even less explicit support. The state and government merely expressed their intention to commit themselves, as necessary appropriate, to helping States build capacity to protect their populations from genocide, crimes, ethnic cleansing and crimes against humanity and to assisting those which are stress before crises and conflicts break out. The issue of post-conflict intervention engagement mainly addressed in institutional terms, namely, through the creation of the Peace-Building Commission, which was specifically established to address the challenge of helping countries, make the transition from war to lasting peace.³⁴⁷ Altogether, the Outcome Document is rather confusing. The fact that, responsibility to protect is treated under a separate rubric indicates that, the idea as such enjoys basic support. Obviously, the drafters also sought to give the concept a certain legal meaning. However, individual components remain unclear, as a result of obvious differences.

THE RESPONSIBILITY TO PROTECT (R2P): REAFFIRMING THE STATUS QUO

The ICISS, established in the wake of NATO's controversial intervention in Kosovo, acknowledged the problems with the existing legal system and cited as its first objective, to establish clearer rules, procedures and criteria for determining whether, when and how to intervene. R2P comprises two main elements, the internal and the international responsibility to protect. The foundational principle underlying the ICISS report was that 'sovereignty', rather than simply signifying an inalienable right to inviolability, imbued states, with a set of domestic responsibilities.³⁴⁸ The 2005 World Summit Outcome Document recognises this in Paragraph 138; "Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means."³⁴⁹

While this is, arguably, a laudable principle, whether it constitutes anything new, or was a meaningful commitment likely to have real impact, is debatable. The agreement reached in 2005 did not include any new means by which compliance with states' internal

³⁴⁷The Responsibility to Protect (RtoP) and Genocide Prevention in Africa, (New York: International Peace Institute, 2009), p.12.

³⁴⁸See U.N. Secretary-General, Implementing the Responsibility to Protect: Rep of the Secretary-General, at 2, U.N. Doc. A/63/677 (Jan. 12, 2009)

³⁴⁹Carsten Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?', *American Journal of International Law*, vol. 101, 2007, p.99.

responsibility would be regulated or, crucially enforced. States may well agree amongst themselves about the standards they should uphold domestically, but ultimately the necessarily domestic nature of compliance with these agreements limits the effect the interstate context of the original treaty can have. With the exception of the possibility that the Security Council will determine that a situation warrants a Chapter VII intervention, non-compliance with human rights treaties results in negative consequences only for the domestic citizenry, rather than other signatories to the treaty. The fact that states agreed again in 2005 to commit to protecting their citizens certainly, did not constitute a unique occasion in the post-Charter era. The problem has not been the principle of internal state responsibility but rather regulating and enforcing compliance.³⁵⁰ Additionally, the ‘four crimes’ noted as being within R2P’s purview, have long been prohibited under international law.

The aspect of R2P that attracts most attention is the principle that, if states fail to meet their responsibility to protect their own citizens this responsibility transfers to the international community. This of course, raises a profoundly important question; in the event that a state manifestly fails to meet its internal responsibility, who can/should take action? In the 1990s, the Security Council expanded its interpretation of its Chapter VII powers to include intra-state humanitarian crises. Chapter VII empowers the Security Council to determine the existence of any threat to the peace, breach of the peace, or act of aggression and decide what measures, including the use of force, need to be taken. During the Cold War this provision was interpreted restrictively; in the landmark Resolution 688 in 1991, however, the Security Council declared that it condemns the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, the consequences of which threaten international peace and security in the region. This signalled a new willingness on the part of the Security Council to broaden its interpretation of Chapter VII to include intra-state humanitarian crises. Stretching this provision to include humanitarian crises provoked some controversy, but an intervention authorized by the Security Council has a very strong legal case, and authorized interventions have not historically, been sources of great legal contestation.³⁵¹ Of greater concern, however, was the inconsistent use of Chapter VII in the post-Cold War era; while the permanent five members of the Security Council (P5) reinterpreted their remit, they did not advance any coherent guidelines, outlining how their new understanding of Chapter VII would be consistently applied; in assessing this remarkable

³⁵⁰Aidan Hehir, *Humanitarian Intervention: An Introduction*, (Palgrave Macmillan, 2013), p.111.

³⁵¹Aidan Hehir, *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention*, (Palgrave Macmillan, 2012), p.75.

transformation in the Security Council's use of Chapter VII, it may be observed that, the application of this provision was haphazard, leading to ambiguous resolutions and conflicting interpretations.³⁵² Action taken by the Security Council under Chapter VII was driven by the national interests of the P5, at the expense of issues of procedural legality. The inconsistent and highly politicised manner in which the P5 authorised intervention, led some to call for unilateral intervention. This proved hugely controversial, however, as evidenced by the debate generated by NATO's intervention in Kosovo in 1999.³⁵³

The ICISS warned about the potentially deleterious consequences of permitting unilateral intervention, but did suggest that, such action could be potentially legitimate. Yet, the better option, according to the ICISS, was to continue to respect the authority of the Security Council. The task, the ICISS emphasised, is not to find alternatives to the Security Council as a source of authority but to make the Security Council work much better, than it has. Recognising the obstacle presented by the veto power of the P5, evident during NATO's intervention in Kosovo in 1999, the ICISS put forward the 'code of conduct' proposal. However, this "gentleman's agreement" was not included, in the 2005 World Summit Outcome Document.³⁵⁴

Paragraph 139 of the World Summit Outcome Document recognised to the external aspect of R2P and the relevant wording in the paragraph stated; "We are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity." The centrality of the Security Council in authorising the "international" responsibility to protect remains, therefore, post-R2P. Ban Ki-Moon's report on the matter also reiterated the absolute need for Security Council authorisation. As with the internal responsibility to protect, there was nothing new in the fact that states agreed in 2005 that the international community has the right to become involved in the domestic affairs of states.³⁵⁵ The Security Council's use of Chapter VII in the

³⁵²Nigel White, 'The Will and Authority of the Security Council after Iraq', *Leiden Journal of International Law*, vol. 17, 2004, p. 645.

³⁵³Alex Bellamy, 'Kosovo and the Advent of Sovereignty as Responsibility', in Aidan Hehir (ed.), *Kosovo, Intervention and State-building*, (Routledge, 2013), p. 42.

³⁵⁴Alex Bellamy, 'Whither the Responsibility to Protect?: Humanitarian Intervention and the 2005 World Summit', *Ethics and International Affairs*, vol. 20, 2006, p.143.

³⁵⁵Monica Hakimi, 'State Bystander Responsibility', *European Journal of International Law*, vol. 21, 2010, p. 341, 343-344.

1990s had amply demonstrated that internal events, including humanitarian crises, could be deemed of international concern and importance, and potentially, grounds for external intervention.

By the time R2P was endorsed by the World Summit in 2005, its normative content had been emasculated, to the point where, it essentially provided that the Security Council could authorize, on a case-by-case basis, things that it had been authorizing for more than a decade. Nothing has been achieved, and no changes to the international system have occurred, which, in any way, alter the legal process governing the response to intra-state crises to ensure consistency or automaticity. Paragraph 139 states that the international community, acting through the UN, has a 'responsibility' rather than an 'obligation' to act and that the Security Council is 'prepared' to act. These changes, in conjunction with the reaffirmation of primacy of the Security Council, enable the P5, therefore, to determine what, if indeed any, action to take in response to a humanitarian crisis.³⁵⁶ There is certainly no new duty or obligation to act; indeed, following the publication of the ICISS report, the P5 emphatically distanced itself from accepting any obligation to take action, while during the course of the 2005 World Summit negotiations, the reluctance of P5 states to accept anything approximating an obligation to intervene, was very evident. As with the internal dimension of R2P, the external aspect of the concept comprises no novel legal compulsion or innovation. R2P's utility therefore is ostensibly that, it can be employed to put pressure on the Security Council to sanction action; a means by which the political will to intervene can be generated through the advocacy of those groups and individuals, with the capacity and financial resources to influence the behaviour of states.

THE INSTITUTIONALISATION OF THE RESPONSIBILITY TO PROTECT (R2P)

The institutionalisation of R2P began with the change of venue from the ICISS to the UN, i.e. from a small venue to a large one with much higher legitimacy. Such change not only enabled vast recognition of R2P in four years, but also eventually led to significant transformations regarding the content of the norm. From a negotiation perspective, small homogeneous venues promote norm specificity and strength, whereas large venues tend to produce ambiguous and/or undemanding rules, because they dilute the influence of outliers, including norm leaders.³⁵⁷ At the early stages of institutionalisation, conceptual limits of R2P

³⁵⁶Jennifer Welsh, *Conclusion: The Evolution of Humanitarian Intervention in International Society*, in *Humanitarian Intervention and International Relations*, (Oxford University Press, 2006), p.176, 210.

³⁵⁷Gelijn Molier, 'Humanitarian Intervention and the Responsibility to Protect after 9/11', *Netherlands International Law Review*, vol. LIII, 2006, p.39.

coincided with the ICISS's Report. From the three R2P elements of prevention, reaction and rebuilding, to the just cause threshold for military intervention, the original framework proposed by the Commission constituted the basis for R2P's consideration within the UN. R2P was officially placed on the agenda of the General Assembly first in 2004 with the 'Report of the Secretary-General's High-level Panel on Threats, Challenges and Change'. This document recognised an individual responsibility of states to protect their populations as well as a collective responsibility to protect for the international community. Nonetheless, in the absence of Member States' resolute support, concerns about potential abuses of the norm continued to exist.

In his second formal attempt with the 2005 'Report on UN Reform: In Larger Freedom', Annan suggested R2P as a matter to be discussed under the heading of 'Freedom to Live in Dignity' rather than that of collective security. Such move conformed to the ICISS's main objective of changing the discourse from a right to intervene (placing the emphasis on the use of military means) to a responsibility to protect (prioritising prevention). This, signalling a toning down of the responsibility to react and a shift in focus towards the responsibility to prevent, was also an indication of further alterations that R2P was to face in the institutionalisation process. Through the World Summit Outcome Document, Member States of the General Assembly unanimously accepted a responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This marked R2P's affirmation by a 'critical mass', which comprised all state members within the UN.³⁵⁸ Yet, the tipping-point was not attained without concessions. In addition to engaging in persuasion efforts, during norm emergence, actors bargain over the content of the emerging norm and strike compromises about the scope, precision, ambition and rigidity of its demands. The Outcome Document, in two consecutive paragraphs, concisely focused on the responsibilities to prevent and react. Paragraph 138 assigned states an individual responsibility to protect their populations from four grave crimes, and to prevent these crimes as well as their incitement, while Paragraph 139 established the responsibility of the international community in case of state failure and to be evaluated on a case-by-case basis. In keeping with the spirit of the preceding documents where emphasis was placed primarily on prioritising non-forceful

³⁵⁸Kathrina P. Coleman, 'Locating Norm Diplomacy', *European Journal of International Relations*, vol. 19, no. 1, 2013, p.167.

measures, the most critical change on R2P was the narrowing of its scope down to the crimes of genocide, ethnic cleansing, war crimes and crimes against humanity.

This reconceptualization constructed the new and limited understanding of the norm, which also helped to remove some of the ambiguities that left room for abuse. While closing the door to the possibility of invoking R2P in cases of natural disasters or calamities such as HIV/AIDS, such delimitation also potentially decreased the number of cases that would be considered in relation to the R2P duties of States. Furthermore, as the wording of Paragraph 139 suggests (e.g. the emphasis on ‘case-by-case’ evaluation), the duties of the international community were purposefully left ambiguous and undemanding. The 2005 consensus was produced, not by the power of humanitarian argument, but by the bargaining away of key tenets of the ICISS’s recommendations. Similarly, it’s posited that, the World Summit approved ‘R2P-lite’ i.e., without specifying the criteria governing the use of force and insisting upon Security Council approval.³⁵⁹

The unanimous adoption of R2P, although with limitations, formally placed the notion within the political discourse of the UN. In 2006, the Security Council reiterated paragraphs 138 and 139 in resolutions 1674 (Protection of Civilians in Armed Conflict) and 1706 (concerning Sudan). Given the substance of paragraphs 138 and 139, and Security Council Resolutions 1674 and 1706, the emerging R2P norm represents the logical consequence of an increasing global consensus, on the need for a new rule of customary international law that can effectively protect human dignity and basic rights.³⁶⁰ Yet, it can be observed that neither the Outcome Document, nor the subsequent resolutions in 2006 established R2P as a legal norm, and R2P action was left conditional upon Security Council approval, making it subject to the existing procedures of the UN. This practice did not change after Ban Ki-Moon succeeded Annan as Secretary-General. Ban Ki-Moon repeatedly underlined the importance of effective implementation, rather than R2P’s legalisation.

THE RESPONSIBILITY TO PROTECT (R2P) AS A STANDARD OF APPROPRIATE BEHAVIOUR

Based on a contextual analysis of the documents adopted within the UN framework, as well as the statements of the Secretary-General, it can be observed that, paragraphs 138 and

³⁵⁹Thomas Weiss, ‘R2P after 9/11 and the World Summit’, *Wisconsin International Law Journal*, vol.24, no.3, 2006, p.750.

³⁶⁰Teresa Chataway, ‘Towards Normative Consensus on Responsibility to Protect’, *Griffith Law Review*, vol.16, no. 1, 2007, p.210

139 established R2P primarily as a standard of appropriate behaviour for states to follow in their internal affairs, and for the international community in its conduct. In its present form, without altering current international law or adding new mechanisms to the existing machinery of the UN, R2P constitutes a standard of appropriate behaviour at two levels. The first, based on the conceptualisation of ‘sovereignty as responsibility’, is a responsibility to be assumed by states individually. ‘Responsibility’ indicates a capacity to act independently and to make decisions without authorization, which in this case is that, based on their own judgement and discretion states protect their populations from the four grave crimes, as part of their sovereign powers.³⁶¹The second concerns the collective responsibility of the international community to assist states in upholding their responsibility and to ensure effective enforcement to halt existing violations. Regarding the first level, it can be argued that UN Member States unanimously accepted with the Outcome Document a national responsibility of states to protect their populations from the four grave crimes. Thus, at the ideational level, as also reaffirmed during the plenary meetings in 2009, R2P has been recognised as appropriate behaviour for states. Nonetheless, such recognition does not necessarily mean that states will undoubtedly follow the logic of appropriateness, in their acts. Given that no original binding mechanism has been established to coerce adherence to the norm, the implementation of R2P is mainly dependent on the ethical understanding and the political will of states.

Implying a focus on internalisation, rather than revising existing principles/rules of international law, the Secretary General noted in his 2011 report that the ultimate goal is to have States institutionalise and societies internalise these principles, in a purposeful and sustainable manner. The more progress that States make towards including these principles in their legislation, policies, practices, attitudes, and institutions, the less recourse will there be to the third pillar (response). While Paragraph 138 determines R2P behaviour for states, Paragraph 139 establishes the responsibilities of the international community in terms of assistance, prevention, protection and reaction. Nevertheless, there is a vital distinction between the responsibilities established by these two paragraphs. While both paragraphs place special emphasis on the preventive aspects of R2P, the former has a restrictive impact on the behaviour of states. R2P, as a norm, is in conformity with the established standards of fundamental human rights, as reflected in universal human rights documents such as the

³⁶¹Hannes Peltonen, ‘Sovereignty as Responsibility, Responsibility to Protect and International Order: On Responsibility, Communal Crime Prevention and International Law’, *Uluslararası İlişkiler*, vol.7, no.28, Winter 2011, p.65.

Universal Declaration of Human Rights (1948) or the legally binding International Covenant on Civil and Political Rights (1966). In this regard, it is possible to talk about previously established sanctioning mechanisms that can be enforced on states, in cases of breaches of fundamental human rights through the machineries of the UN and/or the International Criminal Court, (or in general, on the basis of the 1948 Genocide Convention and the Rome Statute).

Accordingly, it can be observed that states, at least signatories to those conventions, already have certain legal responsibilities that precede the unanimous recognition of R2P. The appropriate behaviour dictated by Paragraph 138 overlaps with these legal responsibilities. Thus, violations of states can be sanctioned by the international community, if the international community prioritises ethical considerations, in its responses to specific cases. In other words, the existing legal machinery can be mobilised for R2P. Nevertheless, the problem is that in the current international system, due to the absence of a legal body like those in domestic or supranational systems, enforcement is dependent on the political will of the international community. In this vein, the wording of Paragraph 139, while imposing the idea of a responsibility at the international level, also leaves ample room for manoeuvre on the part of the international community. Furthermore, it assigns neither the Security Council nor the UN Member States any liability, in case of failure to uphold their collective responsibility.

In a nutshell, following the change of venue, with its institutionalisation through the UN, R2P has gained significance, but not as an international legal norm. With the understanding that was established under the auspices of the UN, R2P has evolved into a singular international ethical norm, rather than a collection of different norms. That is to say, R2P lacks legally binding powers of its own, but provides states and the international community with a standard for appropriate behaviour, that is based on the prioritisation of ethical considerations, where the main objective is to prevent mass atrocities from occurring. While R2P overlaps some of the existing human rights norms, it defines the appropriate behaviour in a singular norm by establishing the responsibilities of prevention and reaction. It remains another question to what extent States and the international community have matured in terms of turning their acceptance of an ethical responsibility into practice.

As a consequence of the understandings of case-by-case evaluation and opting for military intervention only as a last resort, the international community has generally not been eager to take forceful action even in cases that necessitated so. In most situations, UN

resolutions acknowledged the existence of severe violations of human rights and/or international humanitarian law. Accordingly, it urged responsible bodies to end these violations and reminded them of their responsibility to protect their populations. Nevertheless, also troubled with capacity and/or capability issues (such as the lack of a permanent UN military force), the Security Council has refrained from employing forceful measures and interfering in the domestic affairs of these states in the absence of the consent of the affected state.

The implementation of R2P through humanitarian intervention remains an exception rather than a pattern. Above all, R2P has transformed in a way that the use of force is relegated to the background and conditioned upon Security Council authorisation. Since the unanimous adoption of paragraphs 138 and 139, the international community has several times failed to uphold its responsibility to protect, be it in terms of prevention or reaction. Yet, the failure of the international community does not necessarily mean the failure of the norm too. There is much more progress to be achieved to turn R2P into a widely practiced norm. Nevertheless, the norm has established itself visibly within the UN discourse by defining appropriate behaviour for states in the form of an ethical norm, instead of a legal one, as can be inferred from the increasing references to R2P in UN resolutions. Where it was once a term of art employed by a handful of likeminded countries, activists, and scholars, but regarded with suspicion by much of the rest of the world, R2P has become a commonly accepted frame of reference for preventing and responding to mass atrocities.

MORAL ADVOCACY AND THE LEGITIMATION OF STATE-CENTRICISM

The R2P is predicated on a belief in the capacity of “good” people to convince states to change their ways and act so as to alleviate, or prevent, suffering beyond their borders.³⁶² Legal reform is explicitly rejected by many as utopian. Instead, R2P’s advocates imagine a world where the enlightened convince the recalcitrant to change their behaviour and disposition. R2P is “revolutionary,” because it creates a framework for ostensibly irresistible moral advocacy.³⁶³ R2P has become, in essence, a means by which normative pressure is consolidated and political will mobilised so as to change the decision-making calculus of the P5. The fact that in recent years states have increasingly expressed their support for R2P has been routinely cited as evidence of the efficacy of the enlightened. Yet, when states express

³⁶²Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, (Cambridge: Polity Press, 2009), p.119.

³⁶³Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, (Washington DC: Brookings Institution Press, 2008), pp. 246-247.

support for R2P, they are arguably engaging in a form of theatrics designed for public consumption; hortatory declarations of support for R2P, at most, minimally inhibit their behaviour. This is because R2P has been denuded by powerful states of its more controversial aspects, meaning that today it is no more than a linguistic conceit that reaffirms the status quo.

Indeed, one must ask, why would states, particularly the Great Powers, not support such a nebulous concept? What possible disadvantages could result? The powers vested in the P5 have been reaffirmed by R2P and the structure of the system remains the same in all significant respects. Since R2P was recognised in 2005, a number of conflicts have erupted, or continued to rage, quite unaffected by this putative “norm.” These cases each evidence an unedifying juxtaposition of the publicising of egregious human suffering and international inertia. Global civil society has certainly mobilized in response to many crises since 2005 but this has rarely led to remedial action by the “international community.”³⁶⁴ While the websites of many R2P advocacy groups contain myriad articles, opinion pieces, and transcripts of conference proceedings, which highlight the terms proliferation in international political discourse, it is not at all clear that this has much resonance outside the veritable ‘R2P bubble’ that exists, particularly in New York.

FROM THE ‘OLD’ TO THE ‘NEW’ ON SOVEREIGNTY: SAME ESSENCE, DIFFERENT TERMS?

The 21st century has witnessed the ushering in of a new lexicon and lingua surrounding humanitarian intervention. In a bid to circumvent the inevitable collision, between considerations for sovereignty and those of human rights within traditional understanding, the marquee International Commission on Intervention and State Sovereignty (ICISS), in 2001, articulated the need for reconceptualization, of the epistemology of sovereignty. Formulating the concept of a Responsibility to Protect (R2P), it paved the way for coinage of the phraseological principle of “Sovereignty as Responsibility.” The novel phraseological roll-out delineates the authoritative rights and the obligatory responsibilities of governments, in respect of considerations for protection of civilians within their territorial boundaries. Only such states which covet and protect with sentience, the rudimentary rights of their citizenry, are understood to be in fulfilment of their sovereign responsibilities, and are consequently entitled to the enjoyment of sovereign rights. Hence, the legitimacy of sovereignty does not emanate from the privilege of social contract between the governed and

³⁶⁴Richard Cooper and Juliette Kohler (eds.), *Responsibility to Protect: The Global Moral Compact for the 21st Century*, (Palgrave Macmillan, 2009), p. 95.

those who govern them, but is incumbent upon the higher order performance of the state concerned and requisite manifestation by its government that exercises sovereignty in the external realm on behalf of the state, that it adheres to its responsibility to respect and uphold the basic rights of civilians within their remit of governance.³⁶⁵

Expressly endorsed in the Outcome Document adopted at the UN's World Summit of 2005, the Responsibility to Protect (R2P), refers to the idea that each sovereign state has a primary responsibility to protect its people from suffering grave harm, and if it is unable or unwilling to do so, then this responsibility is transferred to the international society, which is committed to acting to preclude a humanitarian conflagration to begin with, requisitely reacting to the outbreak, and resolving to rebuild from scratch so as to prevent recrudescence of the same. Through dovetailing the concepts of sovereignty and human rights, the ICISS Report made for the most comprehensive and meticulously deliberated response to the ineluctable dilemmas coalescing conventional forms of humanitarian intervention. The progressive consolidation of the R2P through the 2001-2005 epoch in particular, has often been held-up as a vestige of a new world order, that commits the international community, to bring an end to mass atrocity crimes.

There is no gainsaying that, the R2P doctrine has succeeded in shifting away from humanitarian intervention, at the rhetorical level, such that, there has been a noticeable abandoning of the phrase 'humanitarian intervention', in favour of the formulation of 'responsibility to protect', across political discourse and academic literature, alike. However, a shift in semantics driven discourse, does not necessarily imply a shift in addressing the main fountainheads of controversy stoking the debate, as to whether the R2P is succeeded in settling the main dilemmas posed by the inadequacies of humanitarian intervention, and whether it is indeed able to transform, the inherent political dynamics of humanitarian interventionism of the 1990s?

The fact remains that, reframing the concept of humanitarian intervention in the new R2P vocabulary language has not altered the actual content of the traditional debate, nor does it provide any genuine approach, to address the initial challenges confronting it. It's quite apparent in hindsight that, the R2P, in terms of the avowedly novel character of the conception of 'sovereignty as responsibility', is not just flawed, but also overly exaggerated. This said, the legal content of the R2P's international responsibility to protect, is nothing but

³⁶⁵James Pattison, *Humanitarian Intervention and the Responsibility to Protect*, (Oxford: Oxford University Press, 2010), p.2.

old wine in new bottles, reflecting the existing international law structure, of the pre-R2P epoch. Even the R2P shift on the moral level, even if it constitutes an innovation, has resulted in disconnecting the R2P from the traditional focus on militarized humanitarian intervention debate.

Those who argue for the nomenclature of R2P over humanitarian intervention, concede that recourse to the latter in language would prioritize a conventional notion of sovereignty over a transformed comprehension of human rights. The inveterately held proposition under the much famed Westphalian sovereign state system pivots on an unabridged and untrammelled authority of the state to exercise unfettered control over all and sundry within its remit of jurisdiction, the perverse extension of which has allowed dystopian regimes, to violate the human rights of their citizens, with wilful impunity. Since such a traditional reading of sovereignty radiates a sense of absolutist command, it in effect characterizes the state's freedom, as being out of bounds from external fetters.³⁶⁶

And it's not as if this new conception, is ploughing a lone furrow, within intellectual moorings. Such revolutionary transformation in perspectives is buttressed by the public domain pronouncements of international actors such as then UN Secretary General Annan, who not only reckoned the sovereignty-human rights dialectic straddle to be complementary, but reposed of the potential to shingle a new conceptual template for cogitation about humanitarian intervention. The World Summit 2005 was heralded as momentous, in the annals of the historical sweep and future trajectory of humanitarian intervention, with no less than the then UK Prime Minister Tony Blair declaring that, it was a first of its kind juncture when states agreed "they do not have the right to do what they will within their own borders."³⁶⁷ A progressive transition in the comprehended essence of sovereignty is also observed in intellectual discourse, though the corpus of scholarship on the issue, lends itself to multitudinous approaches. While one considered view reckons the change to be cathartic and an inflexion-point of sorts, ensuring that sovereignty is not situated higher than human rights, the juxtaposing critique of this novel articulation is apprehensive of whether such latitude would imply hegemony on the part of the Western powers that be, by opening the sluice-gates to interventions masquerading for insidious motives.

³⁶⁶Alex Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds*, (London: Routledge, 2011), p.10.

³⁶⁷Aidan Hehir, Responsibility to Protect: Sound and Fury Signifying Nothing?, *International Relations*, vol. 24, no. 2, 2010, p.229.

Amidst the colourful characterization of ‘sovereignty as responsibility’, it merits to query whether such a formulation, is truly innovative in content and configuration, beyond its telegenic terminology? Holding oneself aloof and detached from the polemical allure, it can be asserted that, the claim of unbridled sovereignty as has existed from time immemorial, is an odious stretch. The visage of untrammelled and unrivalled control of the sovereign across its territory is a warped caricature of the Westphalian world order, conceived and carved up, post 1648. The construct of a sovereign with the unchecked and unrestrained “license to kill” hence being in a position to unleash upon his subject any and all that he wishes to heap upon them, is a grotesque visualisation, in an environ where the sovereign actor enjoys exclusive sphere of competence and capacity to make authoritative decisions regarding the people and resources, within its territory.³⁶⁸ The projection of carte blanche sovereign authority has never been tenable, even in the era of absolutism, where the legitimate authority of the sovereign could be circumscribed in orgies where the state presented itself as a threat to its subjects, or where it was unwilling to protect its subjects. With the trajectory of thinking rooted in the belief of sovereign power acquired popularly within the state, it is held that consent may be recanted, if such sovereign power stands violated in guaranteeing the basic rights of citizens.³⁶⁹

Even the universe of philosophical theorizing does not subscribe to a proposition of unlimited sovereignty, postulating that, where rights are known to exist, they do so in corresponding conjunction, to duties and obligations. Hence, where states are vested with sovereign authority such that their jurisdiction in the external realm and profile as unitary arbiters within internal arena is unquestioned, then, it is tempered, modulated, and squared-off, by the inherent duty to preserve the sanctity of human life, and its enjoyable express and existence, in all manifestations. As the institutions of the Nuremberg and Tokyo War Crimes Tribunals have demonstrated, statist authorities did not necessarily have it all their way, in terms of unfettered sovereignty. The welter of human rights instruments and humanitarian law regimes, spanning the Universal Declaration of Human Rights to the Genocide Convention, not to mention the twin Covenants of the Civil and Political Rights as also that of Economic and Social Rights of the 1960s, have contributed to demarcating the responsibilities and obligations of states, vis-à-vis their citizenry. Even decolonized territories, have accepted

³⁶⁸Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, (Washington, D.C.: Brookings Institution, 2008), p.68.

³⁶⁹Gareth Evans, and MohamedSahnoun, ‘The Responsibility to Protect’, *Foreign Affairs*, vol. 80, no. 6, 2002, p.100.

constraints and checks, upon their sovereign rights. Hence, the artful and refined formulation of ‘sovereignty as responsibility’ notwithstanding, there isn’t all that much to write home about, in terms of the contribution of the R2P construct, in reconceptualising or reconfiguring sovereignty anew, leading to averment that, it’s basically old wine in an albeit captivating new bottle.³⁷⁰

THE RESPONSIBILITY TO PROTECT (R2P): MIRRORING EXISTING INTERNATIONAL LAW?

The idea of a Responsibility to Protect presupposes that where a sovereign state is either incapable or unwilling to tend to the primordial welfare of its citizens, viz., ensuring the safety and security of its peoples, then sovereign entities in the extant can intervene to remedy the anomalous situation. While broadly it has been held that, the international society of states has a right and a duty to dispose in a manner consonant with human beneficence, however, a precise construct, imposing a responsibility to protect, is of recent vintage, and novel in every regard. Such a dimension invokes an equation between the concept and norm of R2P with the provisions and tenets within international law and an examination of how such a R2P principle and strategy framework might imping upon the prevailing international legal prescriptions of humanitarian intervention.

The turbulent decade long epoch of the 1990s, in the immediate wake of the end of the Cold War, precipitated a spate of humanitarian crises, unprecedented in many respects, and evocating dilemmas concerning humanitarian intervention. The unilateral but multinational intervention through the aegis and auspices of NATO, due to ostensible dysfunction and imbroglia within the United Nations, hence declared as “legitimate but illegal”, dredged-up a convolute debate over the legal contours, shaping militarized humanitarian interventions. The contention revolves around three critical aspects, i.e., whether a right to intervention tangibly and tenably exists?; and if it does, then who has the right to empower such an intervention?; and who precisely should undertake to carry it out? The supporters of R2P purport to showcase that legal latitude for such a concept is vested in a new legal framework, however, an intimate scrutiny of the legalese surrounding the contents of Paragraphs 138-140 of the World Summit’s Outcome Document (WSOD) 2005, suggest otherwise. Despite exhausting every possible sinew in argumentation, it may be concluded that the international obligations

³⁷⁰Muhammad Ayoob, Humanitarian Intervention and State Sovereignty, *The International Journal of Human Rights*, vol. 6, no. 1, 2002, p.85.

contained within the aforesaid alluded paragraphs are debatable in their legal character and connotation, and even if they were to be characterized as constituting a legal basis, then too, they are rendered specious in their claim and contention of breaking new legal ground, whether in terms of the decision-making processes of the international community and in relation to the actors responsible for acts of commission in conduction of the intervention.

The effusive endorsement conferred upon R2P, by prominent norm-entrepreneurs such as world leaders during the 2005 World Summit, raised queries about whether or not a new legal responsibility was cast, by this apparently international norm at work, such that conjecture ruminated about the possible incorporation of the norm of R2P as customary international law, on account of its ability to engender a legal obligation upon states to protect innocent individuals in fellow states, through legitimizing coercive interference in the domestic affairs of such states. However, as is the case with law, the naysayers have expressed qualms about the validity of such contentions, expressing doubts as to whether R2P in its establishment and ensuing upholding from time to time does procreate any legal duty, given that the enabling Resolutions that passed muster at the UN General Assembly and the Security Council respectively, have essentially been non-binding recommendations of a hortative nature, based on suasion, if anything. After all, though the R2P framework has specifically curated culpability across the quartet of designated criminal phenomena, these crimes are replete in mention within the corpus of international humanitarian and human rights law. Besides, it may be contended that existing mechanisms within customary international law already impose requirements upon sovereign states to conform to responsibilities prescribed, with regard to preventing human rights violations, assisting other states, and reacting to supreme humanitarian exigencies, amidst state incapacity. A case-in-point is the United Nations Convention on the Prevention and Punishment of Genocide, adopted by the General Assembly back in 1948. The Convention stipulates that sovereign state signatories are to not only preclude the occurrence of Genocide within their sovereign boundaries, but to also step-in, to stave-off such transpiring, when unfolding beyond their borders. Amidst this prevailing duality of obligations within and without, UN SG Ban Ki-Moon reaffirmed the view in his Report of 2009, that R2P broadly embodied and reflected the prevailing treaty-based regime of international law, with regard to responsibility for protection of civilians, in exterminating harm.

The fact remains that at no point in time has the case or cause for humanitarian intervention, ever been expressly and comprehensively staunch within international law. To

the contrary, the UN Charter, which carries the unique effect of law itself, provides that intervention in pursuance of humanitarian objectives can be undertaken, subject to such measures being permitted through prior authorization by the global body, in consonance with its Charter provisions framework. It's a different matter that this framework came under strain and was sullied as a result of NATO's interventionist action against Serbia over Kosovo, transgressing its known and understood bounds by arrogating to itself the right that is perfunctorily vested in the United Nations, even though the conditions (of a Russian VETO and alternatively even one from the Peoples' Republic of China), under which such circumventing reference was made to NATO, was known.

The key controversy within humanitarian intervention is also about who is empowered to undertake such an intervention and the R2P framework for all its touting, does not necessarily redress the dichotomy of the individual states' right to unilateral intervention, and the international organization's unabridged authority, to sanction requisite humanitarian action. The avenue provided for under R2P, is consistent with the promenade afforded, by existing legal instruments and regimes in place. The Report of the International Commission on Intervention and State Sovereignty (ICISS) stuck with the established formulation wherein the UN mechanism of the Security Council is considered apt, in determination of a cause, worthy of intervention. However, where the ICISS endeavoured to suggest alternative methods of eliciting sanction, which could be considered as reflective of the overwhelming weight of global opinion, such as approaching the UN General Assembly, in replication of the 'Uniting for Peace' Resolution episode, of decades prior, or contriving authority for intervention through delegation to regional security organizations (RSOs), such creative alternatives were summarily shot down, in the 2005 Outcome Document.

The thorny issue of legitimizing interventions that have not passed the sieve of the UN Security Council has always been a prickly matter and was no different during deliberations at the 2005 World Summit, with consensus elusive on the subject, particularly in instances where the Security Council hits an intransigent impasse. While disapproving of the ICISS's proposal for alternative references, the global comity of sovereign state membership embraced a watered-down proposal termed as 'R2P LITE', wherein the notion of legitimate intervention without explicit SC approval was avoided, and the primary legal authority for intervention, remained vested in the SC, akin to the pre-R2P emergence.³⁷¹Towards

³⁷¹Jed lea-Henry, 'The Responsibility to Protect (R2P) and the Problem of Political Will', *Polish Political Science Yearbook*, 2018, p. 565.

surmounting the other predicament of liberal VETO use by UN Permanent Members in cases involving humanitarian interventions, where the wielding of such scuttling power is hardly being undertaken on higher principle but for cynical opportunistic reasons of parochial national interest, R2P has proved to be feckless, with the ICISS proposal for a Code of Conduct on use of the privileged VETO power not going down favourably with the permanent membership of the UN and was similarly passed over for an ‘R2P LITE’ provision.

The auxiliary edition of the ICISS Report of 2001 stipulates that where a citizen’s rights are trampled upon, corresponding obligations ought to be identified as also the change agents who would carry out such obligations. This said, R2P is unable to pinpoint as to who precisely should be vested with the authoritative right to undertake and spearhead such an intervention towards responsible protection. A generic term reference, to the ‘international community’, is not only vague, but also obfuscating, and does nothing to address the piquant issue of much heartburn and angst. Such predicament of unassigned responsibility not only allows for convenient finger-pointing in a bid to eschew having to bell-the-cat with touch actions so-to-speak, whilst also allowing entities capable of intervening but unwilling to do so, to pressure other peers to dispose. Besides, not pinpointing an agent of responsibility leaves room for free-riding bandwagon, by entities, on the cheap. Hence, it may be reasonably concluded that for all its fanfare, R2P does not go beyond the existing framework of international law nor does it resolve any of the dimensions of contestations, which bedevil the travails of humanitarian induced military interventions.

THE ‘MORALITY’ OF A RESPONSIBILITY TO PROTECT (R2P): DISCONNECTION FROM HUMANITARIAN INTERVENTION?

When benchmarked on considerations of ethicality and novelty, the responsibility to protect is tended to be portrayed and projected, as a veritable global moral compact. The debate picks up the gauntlet on the fundamental ethical proposition, of whether outsiders repose of the moral right, to act in a manner that transgresses borders, in pursuance of alleviating the suffering of those hemmed-in, within a sovereign state? The moral dimension to this issue pits two sets of values in juxtaposition, viz., the primacy of state sovereignty vis-à-vis primordial concern for human rights. Classicist ethical frameworks tend to prioritize the rights of states, over all else. The conventional frame of humanitarian intervention, homes in on the role and profile of the intervening entities over the aggravated needs of the innocent citizenry, and privileges the “right to intervene” that exudes the perspective of potential

interveners, over the requirements of the hard done by. The discourse within R2P marks a fundamental transition along the axis of ethics, transforming the conception and debate from a rights based argument to one driven by responsibilities and from an interventionist centric argument to one rooted in civilian protection.³⁷²

The exploration of issues of human rights violations, from the standpoint of the endangered communities within a state, is in consonance with the developing conception, articulation and advancement of the construct of ‘human security.’ Upholding the trajectory of human security, affords higher ordering to the security of the individual over the security of the territorial state. It is premised on the considered view that entitlement for human rights is universal in its scope, and endeavours to provide genuine and tangible protection to citizens in the crosshairs of harm.

The R2P principle, in terms of its sentiment, remains anchored in the cosmopolitan view of the world. Cosmopolitanism in this regard holds that, the onset for morality cannot militate within the purview of national affinities but has to embrace the worldview of common humanity, and that the moral impulse to protect civilians, emanates from the moral obligation to regard humanity and address humanitarian privations. The contrarian view challenges the notion of existence of a moral duty to protect, such that, even where rights are thought to be inalienable, they still have to be a part of the codified legal and institutional firmament, for their operation. Pluralist objections abound too, arguing that political dispensations must be insulated from the overbearing imposition of Western conceptions, almost dogmatically posited, as being universal.³⁷³ When viewed through the prism of neo-imperialism, R2P stands decried as a gambit to return the world to the unsavoury experiences of recurrent ingresses by colonial and imperialist forces in fulfilment of their insidious motives, and disdainfully perpetrated through the sweep of history.

Proponents and votaries of the R2P principle have not tired of emphasizing that the overriding imperative lies in acting earnestly and efficaciously in preventing humanitarian cries from consummating into full blown monstrosity. Hence, the focus is on normatively and operationally catering to and gearing up for prevention based mechanisms, rather than to prime oneself for interventions aimed at dousing the fires of conflict, also made necessary by the fact that, it is invariably formidable to build consensus around a single form of

³⁷²Stefanie Fishel, ‘Theorizing Violence in the Responsibility to Protect’, *Critical Studies on Security*, vol.1, no. 2, 2013, p. 215.

³⁷³Chris Brown, ‘The Anti-political theory of Responsibility to Protect’, *Global Responsibility to Protect*, vol. 5, no. 4, p. 442.

intervention, to satisfactorily address the unfolding humanitarian situation. The transition in emphasis is salutary in that humanitarian intervention in vogue during the 1990s generated questions and dilemmas concerning their legitimacy, in the context of coercive militarised and non-consensual enforcement action. In contrast, the R2P approach is anchored in the desire for consensual actions and consequently stresses on the need to foster progressive governance which holds the antidote key to degenerative conflict and humanitarian excesses. Furthermore, with the locus of responsibility shifting from the perfunctorily understood post-facto reaction and response to a pre-emptive and proactive prevention model of conflict resolution, the debate has pivoted to the permissive and consensual deployment of armed force.

On the basis of the foregoing it may be safely argued and contended that, the ushering-in of a doctrine of Responsibility to Protect (R2P), did not quite transform the traditional relationship between sovereignty, human rights and the obligations of the international comity of nations to protect during the 1990s, as claimed. While there is no controverting that there has been a marked shift in the discourse over humanitarian action and its attendant approaches, nevertheless, the alleged R2P transition to a so-called new conception of sovereignty recognition is an oxymoron, as earlier narrations and invocations of state sovereignty have possessed aspects pertaining to the sovereign responsibility of populaces. In reality, notwithstanding the rhetorical flourish, there is no substantive mutation in the legal standing of the 1990s humanitarian intervention and the R2P of the 21st century; if anything it draws on the legislated enforcement mechanisms provided for and availed of during the mixed decade of the 1990s. Also the moral shift of R2P from militarized intervention to forms of prevention with little clarity on approaches or courses of action has left the humanitarian intervention-R2P linkages muddled.³⁷⁴ Whilst not necessarily bringing anything new to the debate or the toolkit of action, the R2P normative construct reinforces the same dilemmas that persisted during humanitarian interventions of the 1990s, viz., is there a rationalized right to intervene? If so under whose chaperoning authority? And further, under whose commissioning and commandeer

³⁷⁴Michael Doyle, 'The Politics of Global Humanitarianism: The Responsibility to Protect Before and After Libya', *International Politics*, vol. 53, no. 1, 2016, p. 15.

CHAPTER VI

SUMMAR AND CONCLUSION

As the self-evident formulation of the doctoral research theme indicates, the endeavour has been to examine and investigate militarized humanitarian interventions during the decade of the 1990s, with a view to comprehending and decoding the contours and trajectory, shaping the discourse and politics surrounding such interventions, undertaken, in ostensible pursuance of ameliorative and beneficent humanitarianism. The decade of the 1990s, i.e., the on-setting decade post the relatively halcyon end to bipolar politics, was perfunctorily perceived to be a period that would usher in tranquillity and consensual normalcy in world affairs, in an environment devoid of ideological delimitation and exclusivity. However, as things panned-out, the decade leading into the 21st century, was a tumultuous and tempestuous epoch, replete with virulent upheavals, stemming from an upsurge in ethno-nationalism, the exposure of tenuousness of fragile state structures, and the rise of new non-state protagonists within states, litigating their slew of grievances from political repression to economic deprivation, through recourse to atavistic violence, and inviting reprisals and recriminations in return, all in all contributing to an enveloping environ, of pervasive violence and insecurity. As the norm of inter-state wars morphed into the proliferation of intra-state hostilities, the international community found itself waffling amidst the discerned inadequacies of the conventionally established instrumentalities of conflict management and resolution, as also the commandeer of peace operations, which were veritable antidotes to inter-state conflicts. What accentuated matters was that, despite the salutary efforts of successive UN Secretary Generals, Boutros BoutrosGhali and Kofi Annan, to exhort the UN, in particular the major powers that be on the Security Council, the permanent members, outside of a solitary outlier France, were either tepid or indifferent, to the emboldening of the mechanism of peacekeeping by enshrining the provision for a Stand-by Readiness Force for real-time deployment to conflict zones, but also seemed lackadaisical, to address the institutional infirmities surrounding Chapter VII authority, buffeted under the UN Charter's aegis and auspices.

However, while efforts to attune the international community to operational readiness curated to the changing times was coming a cropper, strangely enough, the normative evolution of the imperative for defending human rights across the world and even enforcing existing regimes that provide for protection of rudimentary human rights of all peoples and all societies began to take root and permeate thinking, premised on the conception of cosmopolitan approach to international society and predicated on actionable and effective solidarity in support of communities in distress. The emerging discourse on human rights and humanitarianism of the 1990s, anchored in frames of human dignity, human development, and human rights accountability, did not seek to construct a metaphysical new framework; instead, it sought to create meta-political narratives that simply redefined rather than reconceptualised concepts of state sovereignty and human security, into what was now meant to be an acceptable and desirable standard of international behaviour, in response to savage violence executed against marooned populaces, but transpiring wholly behind sovereign frontiers. Amidst the visage of a 'New World Order' which was meant to advance democracy, human rights and good governance, not just as idioms for the international system to embrace, but also meant to constitute the attributive standards upon which statist regimes were now to be judged and acted upon, what began with the advent of the UN's Human Development Report and attendant Index, reframing Human Security, further progressed down the path of the conception of 'Sovereignty as Responsibility', in the context of the new understanding of Internally Displaced Persons (IDPs), and also witnessed the transition from inceptioning of International War Crimes Tribunals (IWCTs) to purposefully prosecute individuals within statist structures, culpable of mass atrocity human rights crimes, all the way to the establishment of the International Criminal Court, at the turn of the century.

All of this and more culminated in the ushering in of the doctrinal praxis of the 'Responsibility to Protect' principle which emanated from a conscious UN mandated but international community spearheaded intellectual and policy relevant effort to dovetail the apparently incompatible phenomenon of inalienable and incontrovertible 'State Sovereignty' on the one hand, and the strategic 'Use of Force' by the international community in pursuance of civilian protection from depredations of

unfolding war or unleashed virulence. Hence, contrary to conventional wisdom, the decade of the 1990s marked the drift towards an enriching discourse on humanitarianism that transcended the routine provisioning of succour and sustenance to victims of violent strife, in favour of marked endeavours through coercive or punitive military interventions, executed in support of consummating the holistic emancipation of victims, founded on the dictum that, human rights are meaningful, not by their enactment, but by their enforcement.

In terms of the practice, the phenomena of military interventions for humanitarian purposes, has seen a chequered record, during the decade of the 1990s. Whilst the challenge to mount humanitarian interventions has emanated from myriad conflict situations, spanning civil wars to ethnic cleansing and state repression, the trend has favoured an intervention rather than non-intervention, albeit that such interventions and the decision-making around them has tended to be haphazard, arbitrary and selective. Barring one instance of Rwanda, which saw the world be a mute bystander to a savage ethnic pogrom, the rest of the situations were confronted with militarized interventions of varied hue, this despite the fact that the UN Charter framework does not expressly sanction the use of armed measures to arbitrate humanitarian situations per se.

The conceptualisation of humanitarian intervention and construction of the doctrine coalescing it is intricate and convolute, on account of situating itself at the intersection of politics, ethics and legality pertaining to such a framework. While decisions made by sovereign states are infamous for their politicking nature, the overlay of ethical impulses and the underpinning of legal precepts often act as push and pull factors in conditioning the ultimate disposition towards the idea and doctrine of muscular humanitarianism. With human rights acquiring precedence over state sovereignty in discourse, the pressure to skew in favour of interventions to thwart the emasculation of innocent civilians has implied that the international community has acted in state repressive spectre of Northern Iraq, a state failure and state collapsed situation in war-torn Somalia, opting to support restoration of democracy in Haiti, and stepping in to preclude ethnic cleansing in Kosovo. The politics surrounding decision making over these instances, has seen the amalgam or the interplay of legal facets in

conjunction with moral touchstones in determining the contours and trajectory of the response, so much so that, if the UN was entering uncharted territory in attempting to nation-build Somalia, in the absence of a sovereign government in place, then, through the intervention by NATO in Kosovo, that circumvented the UN, albeit under exceptional circumstances, the impulse of humanitarianism, weighing heavy over legal procedures and Charter processes that undermine the cause of ethical humanitarianism, was established.

The thesis queried a trinity of research questions, viz., *as to how does a norm and normative development, contribute to the construct of muscular humanitarianism, in the post-Cold War era?; what are the impacts of politically induced decision-making, between the premier global body the UN and its most preponderant member-state, the US, on the typology of humanitarian interventions of militarized hue, so conducted?; and whether a 'Responsibility to Protect' over a 'Right of Intervention', requisitely addresses the galling issue of subjectivity, in application of the standard of humanitarian intervention, to situations of humanitarianism, not so dissimilar of each other?* The thesis brings to the fore the genealogy of norms and their consummation, from emergence to cascade, and when superimposed upon the quadrant of case studies under examination, reveals that the decade of the 1990s has led to the emergence and establishment of a norm of humanitarian intervention, evidenced by the dint of interventions transpiring and the norm-entrepreneurship that has accompanied its peddling, from successive UN Secretary Generals through to successive US Presidents, alike. In contrast, since the advent of the 'Responsibility to Protect' doctrinal principle, interventions in support of humanitarianism have winnowed in comparison, and have been subject to greater undermining and trammelling than was the case during the decade of the 1990s.

As for the relationship between the United Nations and the United States and how it has and continues to impact humanitarian interventions, it must be said that the US has clearly been the singular run-away norm entrepreneur pushing for humanitarian interventions even in situations where no existential or significant equities national interests lay, such as in Somalia, and Kosovo for certain, and even in the Haitian and Iraqi contexts. If the US was unwilling to intervene or was tardy in

framing its response, the UN process has either simply gone flaccid or has come unstuck as what happened, when Washington pulled its troops out of Somalia, after the unsavoury Black Hawk incident that consumed eighteen US servicemen, the pull out leaving the UN to throw in the towel and retreat from the assignment on hand. Similarly, the UNSC resolutions on Haiti would not have fructified, if not for American diplomatic skittishness, and NATO's air blitz to shield innocent Kosovars would hardly have materialised if the US had not found the gumption to go the whole hog. The ideologically juxtaposing countries, essentially led by Russia and China, have opposed US led humanitarian interventions on grounds of it being the surreptitious perpetuation of the Western agenda of regime-change, however, outside of forestalling the impending action on Serbia over Kosovo, did not quite stand in the way of ultimate Resolutions, sanctioned by the UN in favour of multinational interventions. Besides, the welter of developing countries, who often view the latitude for humanitarian intervention as convenient scope for the powerful hegemonic nations to wield their insidious machinations upon lesser countries, have voiced opposition, but have seldom come up with constructive and positive solutions to address situations of abject humanitarian excesses. Hence the outsized role of the United States and its Western coalitions, on humanitarian interventionism, that one has come to witness, during the decade of the 1990s.

The advent of the 'Responsibility to Protect' doctrine in the embryonic stages of the 21st century sought to mark a conceptual and discursive shift in the landscape of strategic use of force for civilian protection. On the one hand, the attempt was to turn away from the patronizing right of sovereign states in the extant, to impose themselves on the target-state for legitimate and not so legitimate reasons, often difficult to decipher other than on a case-to-case basis, and in favour of a duty upon states to facilitate protection of civilians through capacity building of the target-state and to consider intervention, as a final resort. Furthermore, R2P endeavours to advance the line of argument that emphasises and prioritizes sovereign responsibility upon sovereign impunity and to cast a duty or obligation upon the host state to fall in line, else face comeuppance. Notwithstanding, R2P also perceives the conflict situations in a comprehensive frame that embraces the dimensions of post conflict state-building as

much as addressing the malevolent acts of macabre violence, in contrast to humanitarian interventions, which have bailed out before completing the task, for reasons of omission and commission. However, despite the noble intentions and detailed intellectual heavy lifting, from the ICISS Report of 2001, through to the adoption of the Outcome Document at the World Summit of 2005, R2P has come up short on effecting a strategic pivot in nations and their cognitive and operative thinking on responding to supreme humanitarian emergencies, wrought on through human vile. Fifteen years on, the track record of R2P reflects similar if not more abysmal levels of selectivity and double standards which has cast doubts on whether the needle has indeed moved on finding a refinement to the doctrine of humanitarian intervention, often presented and portrayed as profoundly contentious and polarizing.

Chapter VIII of the UN Charter stipulates the framework for potential collaboration between the United Nations and the spectrum of regional security organizations, in matters of maintaining peace and security, across specific geographical coordinates around the world. Articles 52-54 clarify the sequential procedure and processes at in-concert arrangements which can be arrived at, towards tending to issues of conflict and security, albeit from a conventional prism. However, these provisions are rooted in the traditional conception of the incontrovertible primacy of the United Nations, and the imperative for prior Security Council authorization as an epitome of legitimacy for rationalizing the ethical standard and political malleability of a particular military intervention, instrumentalized for humanitarian purposes. However, it remains equally a fact indelibly forged on the canvass of international politics and sovereign interchange at the UN that, the major powers that be, viz., the Permanent Members on the Council have been reluctant to vest coercive or punitive powers in a reformed framework of UN Peacekeeping Operations. Despite UNSG Boutros BoutrosGhali's recommendation during his Annual Report on the Work of the Organization in 1992, and across subsequent iterations of it in 1995 and 1996, not to mention the Brahimi Panel for Peacekeeping Operations of 2000, calling for strengthening UN Peace Operations, outside of France, none of the other major powers have shown either inclination or enthusiasm for supporting a permanent standby force in readiness to be deployed to situations of intra-

state conflicts spurring egregious humanitarian distress. If the doctrine of humanitarian intervention is to be revived or if the responsibility to protect has to be forged in the visage of humanitarian interventions, then the dialectic of order vis-à-vis justice, has to be satisfactorily addressed. Prioritizing order within the international system within the traditional framework of state sovereignty of sovereign equals is a proposition of pyrrhic consequences, as it does not guarantee stability or security in the modern day era of internal violence, decentralized insecurities and asymmetrical, low-intensity threats. Justice within communities and across societies is the enduring way to peace.

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ANNEXURES

United Nations Security Council Resolution (UNSCR) 688

Iraq (5 Apr)

Resolution 688 (1991) of 5 April 1991

The Security Council,

Mindful of its duties and its responsibilities under the Charter of the United Nations for the maintenance of international peace and security,

Recalling the provisions of Article 2, paragraph 7, of the Charter,

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

Deeply disturbed by the magnitude of the human suffering involved,

Taking note of the letters dated 2 and 4 April 1991, respectively, from the representatives of Turkey and France to the United Nations, addressed to the President of the Security Council,

Taking note also of the letters dated 3 and 4 April 1991 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General,

Reaffirming the commitment of all Member States to respect the sovereignty, territorial integrity and political independence of **Iraq** and of all States in the region.

Bearing in mind the report transmitted by the Secretary-General on 20 March 1991,

1. Condemns the repression of the **Iraqi** civilian population in many parts of **Iraq**, including most recently in Kurdish-populated areas, the consequences of which threaten international peace and security in the region;
2. Demands that **Iraq**, as a contribution to removing the threat to international peace and security in the region, immediately end this repression, and in the same context expresses the hope that an open dialogue will take place to ensure that the human and political rights of all **Iraqi** citizens are respected;
3. Insists that **Iraq** allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of **Iraq** and make available all necessary facilities for their operations;
4. Requests the Secretary-General to pursue his humanitarian efforts in **Iraq** and to report forthwith, if appropriate on the basis of a further mission to the region, on the plight of the **Iraqi** civilian population, and in particular the Kurdish population, suffering from the repression in all its forms inflicted by the **Iraqi** authorities;
5. Also requests the Secretary-General to use all the resources at his disposal, including those of the relevant United Nations agencies, to address urgently the critical needs of the refugees and displaced **Iraqi** population;
6. Appeals to all Member States and to all humanitarian organizations to contribute to these humanitarian relief efforts;
7. Demands that **Iraq** cooperate with the Secretary-General to these ends;

8. Decides to remain seized of the matter.

Adopted at the 2982nd meeting by 10 votes to 3 (Cuba, Yemen, Zimbabwe), with 2 abstentions (China, India).

United Nations Security Council Resolution 794

Somalia

S/RES/794 (1992) 3 .December 1992

RESOLUTION 794 (1992)

Adopted by the Security Council at its 3145th meeting,

on 3 December 1992

The Security Council,

Reaffirming its resolutions 733 (1992) of 23 January 1992, 746 (1992) of 17 March 1992, 751 (1992) of 24 April 1992, 767 (1992) of 27 July 1992 and 775 (1992) of 28 August 1992,

Recognizing the unique character of the present situation in **Somalia** and mindful of its deteriorating, complex and extraordinary nature, requiring an immediate and exceptional response,

Determining that the magnitude of the human tragedy caused by the conflict in **Somalia**, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security,

Gravely alarmed by the deterioration of the humanitarian situation in **Somalia** and underlining the urgent need for the quick delivery of humanitarian assistance in the whole country,

Noting the efforts of the League of Arab States, the Organization of African Unity, and in particular the proposal made by its Chairman at the forty-seventh regular session of the General Assembly for the organization of an international conference on **Somalia**, and the Organization of the Islamic Conference and other regional agencies and arrangements to promote reconciliation and political settlement in **Somalia** and to address the humanitarian needs of the people of that country,

Commending the on-going efforts of the United Nations, its specialized agencies and humanitarian organizations and of non-governmental organizations and of States to ensure delivery of humanitarian assistance in **Somalia**,

Responding to the urgent calls from **Somalia** for the international community to take measures to ensure the delivery of humanitarian assistance in **Somalia**,

Expressing grave alarm at continuing reports of widespread violations of international humanitarian law occurring in **Somalia**, including reports of violence and threats of violence against personnel participating lawfully in impartial humanitarian relief activities; deliberate attacks on non-combatants, relief consignments and vehicles, and medical and relief facilities; and impeding the delivery of food and medical supplies essential for the survival of the civilian population,

Dismayed by the continuation of conditions that impede the delivery of humanitarian supplies to destinations within **Somalia**, and in particular reports of looting of relief supplies destined for starving people, attacks on aircraft and ships bringing in humanitarian relief supplies, and attacks on the Pakistani UNOSOM contingent in Mogadishu,

Taking note with appreciation of the letters of the Secretary-General of 24 November 1992 (S/24859) and of 29 November 1992 (S/24868),

Sharing the Secretary-General's assessment that the situation in **Somalia** is intolerable and that it has become necessary to review the basic premises and principles of the United Nations effort in **Somalia**, and that UNOSOM's existing course would not in present circumstances be an adequate response to the tragedy in **Somalia**,

Determined to establish as soon as possible the necessary conditions for the delivery of humanitarian assistance wherever needed in **Somalia**, in conformity with resolutions 751 (1992) and 767 (1992),

Noting the offer by Member States aimed at establishing a secure environment for humanitarian relief operations in **Somalia** as soon as possible,

Determined further to restore peace, stability and law and order with a view to facilitating the process of a political settlement under the auspices of the United Nations, aimed at national reconciliation in **Somalia**, and encouraging the Secretary-General and his Special Representative to continue and intensify their work at the national and regional levels to promote these objectives,

Recognizing that the people of **Somalia** bear ultimate responsibility for national reconciliation and the reconstruction of their own country,

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

2. Demands that all parties, movements and factions in **Somalia** take all measures necessary to facilitate the efforts of the United Nations, its specialized agencies and humanitarian organizations to provide urgent humanitarian assistance to the affected population in **Somalia**;

3. Also demands that all parties, movements and factions in **Somalia** take all measures necessary to ensure the safety of United Nations and all other personnel engaged in the delivery of humanitarian assistance, including the military forces to be established pursuant to the authorization given in paragraph 10 below;

4. Further demands that all parties, movements and factions in **Somalia** immediately cease and desist from all breaches of international humanitarian law including from actions such as those described above;

5. Strongly condemns all violations of international humanitarian law occurring in **Somalia**, including in particular the deliberate impeding of the delivery of food and medical supplies essential for the survival of the civilian population, and affirms that those who commit or order the commission of such acts will be held individually responsible in respect of such acts;

6. Decides that the operations and the further deployment of the 3,500 personnel of the United Nations Operation in **Somalia** (UNOSOM) authorized by paragraph 3 of resolution 775 (1992) should proceed at the discretion of the Secretary-General in the light of his assessment of conditions on the ground; and requests him to keep the Council informed and to make such recommendations as may be appropriate for the fulfilment of its mandate where conditions permit;

7. Endorses the recommendation by the Secretary-General in his letter of 29 November 1992 (S/24868) that action under Chapter VII of the Charter of the United Nations should be taken

in order to establish a secure environment for humanitarian relief operations in **Somalia** as soon as possible;

8. Welcomes the offer by a Member State described in the Secretary-General's letter to the Council of 29 November 1992 (S/24868) concerning the establishment of an operation to create such a secure environment;

9. Welcomes also offers by other Member States to participate in that operation;

10. Acting under Chapter VII of the Charter of the United Nations, authorizes the Secretary-General and Member States cooperating to implement the offer referred to in paragraph 8 above to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in **Somalia**;

11. Calls on all Member States which are in a position to do so to provide military forces and to make additional contributions, in cash or in kind, in accordance with paragraph 10 above and requests the Secretary-General to establish a fund through which the contributions, where appropriate, could be channelled to the States or operations concerned;

12. Authorizes the Secretary-General and the Member States concerned to make the necessary arrangements for the unified command and control of the forces involved, which will reflect the offer referred to in paragraph 8 above

13. Requests the Secretary-General and the Member States acting under paragraph 10 above to establish appropriate mechanisms for coordination between the United Nations and their military forces;

14. Decides to appoint an ad hoc commission composed of members of the Security Council to report to the Council on the implementation of this resolution;

15. Invites the Secretary-General to attach a small UNOSOM liaison staff to the Field Headquarters of the unified command;

16. Acting under Chapters VII and VIII of the Charter, calls upon States, nationally or through regional agencies or arrangements, to use such measures as may be necessary to ensure strict implementation of paragraph 5 of resolution 733 (1992);

17. Requests all States, in particular those in the region, to provide appropriate support for the actions undertaken by States, nationally or through regional agencies or arrangements, pursuant to this and other relevant resolutions;

18. Requests the Secretary-General and, as appropriate, the States concerned to report to the Council on a regular basis, the first such report to be made no later than fifteen days after the adoption of this resolution, on the implementation of this resolution and the attainment of the objective of establishing a secure environment so as to enable the Council to make the necessary decision for a prompt transition to continued peace-keeping operations;

19. Requests the Secretary-General to submit a plan to the Council initially within fifteen days after the adoption of this resolution to ensure that UNOSOM will be able to fulfil its mandate upon the withdrawal of the unified command;

20. Invites the Secretary-General and his Special Representative to continue their efforts to achieve a political settlement in **Somalia**;

21. Decides to remain actively seized of the matter.

United Nations Security Council Resolution (UNSCR) 841

Haiti (16 June)

S/RES/841 (1993)

16 June 1993

RESOLUTION 841 (1993)

Adopted by the Security Council at its 3238th meeting

on 16 June 1993

The Security Council,

Having received a letter from the Permanent Representative of **Haiti** to the President of the Council dated 7 June 1993 (S/25958) requesting that the Council make universal and mandatory the trade embargo on **Haiti** recommended by the Organization of American States, Having also heard a report of the Secretary-General on 10 June 1993 regarding the crisis in **Haiti**,

Noting resolutions MRE/RES.1/91, MRE/RES.2/91, MRE/RES.3/92 and MRE/RES.4/92 adopted by the Foreign Ministers of the Organization of American States, and resolution CP/RES.594 (923/92) and declarations CP/Dec.8 (927/93), CP/Dec.9 (931/93) and CP/Dec.10 (934/93) adopted by the Permanent Council of the Organization of American States,

Noting in particular resolution MRE/RES.5/93 adopted by the Foreign Ministers of the Organization of American States in Managua, Nicaragua, on 6 June 1993,

Recalling General Assembly resolutions 46/7 of 11 October 1991, 46/138 of 17 December 1991, 47/20 A of 24 November 1992, 47/143 of 18 December 1992 and 47/20 B of 23 April 1993,

Strongly supportive of the continuing leadership by the Secretary-General of the United Nations and the Secretary-General of the Organization of American States and of the efforts of the international community to reach a political solution to the crisis in **Haiti**,

Commending the efforts undertaken by the Special Envoy for **Haiti** of the United Nations and Organization of American States Secretaries-General, Mr. Dante Caputo, to establish a political dialogue with the **Haitian** parties with a view to resolving the crisis in **Haiti**,

Recognizing the urgent need for an early, comprehensive and peaceful settlement, of the crisis in **Haiti**, in accordance with provisions of Charter of United Nations and international law,

Also recalling the statement of 26 February 1993 (S/25344), in which the Council noted with concern the incidence of humanitarian crises, including mass displacements of population, becoming or aggravating threats to international peace and security.

Deploring the fact that, despite the efforts of the international community, the legitimate Government of President Jean-Bertrand Aristide has not been reinstated,

Concerned that the persistence of this situation contributes to a climate of fear of persecution and economic dislocation which could increase the number of **Haitians** seeking refuge in neighbouring Member States and convinced that a reversal of this situation is needed to prevent its negative repercussions on the region,

Recalling, in this respect, the provisions of Chapter VIII of the Charter of the United Nations, and stressing the need for effective cooperation between regional organizations and the United Nations,

Considering that the above-mentioned request of the Permanent Representative of **Haiti**, made within the context of the related actions previously taken by the Organization of American States and by the General Assembly of the United Nations, defines a unique and exceptional situation warranting extraordinary measures by the Security Council in support of the efforts undertaken within the framework of the Organization of American States, and,

Determining that, in these unique and exceptional circumstances, the continuation of this situation threatens international peace and security in the region,

Acting, therefore, under Chapter VII of the Charter of the United Nations,

1. Affirms that the solution of the crisis in **Haiti** should take into account the above-mentioned resolutions of the Organization of American States and of the General Assembly of the United Nations;
2. Welcomes the request of the General Assembly that the Secretary-General take the necessary measures in order to assist, in cooperation with the Organization of American States, in the solution of the crisis in **Haiti**;
3. Decides that the provisions set forth in paragraphs 5 to 14 below, which are consistent with the trade embargo recommended by the Organization of American States, shall come into force at 00.01 EST on 23 June 1993 unless the Secretary-General, having regard to the views of the Secretary-General of the Organization of American States, has reported to the Council that, in light of the results of the negotiations conducted by the Special Envoy for **Haiti** of the United Nations and Organization of American States Secretaries-General, the imposition of such measures is not warranted at that time;
4. Decides that if at any time after the submission of the above-mentioned report of the Secretary-General, the Secretary-General, having regard to the views of the Secretary-General of the Organization of American States, reports to the Council that the de facto authorities in **Haiti** have failed to comply in good faith with their undertakings in the above-mentioned negotiations, the provisions set forth in paragraphs 5 to 14 below shall come into force immediately;
5. Decides that all States shall prevent the sale or supply, by their nationals or from their territories or using their flag vessels or aircraft, of petroleum or petroleum products or arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, police equipment and spare parts for the aforementioned, whether or not originating in their territories, to any person or body in **Haiti** or to any person or body for the purpose of any business carried on in or operated from **Haiti**, and any activities by their nationals or in their territories which promote or are calculated to promote such sale or supply;
6. Decides to prohibit any and all traffic from entering the territory or territorial sea of **Haiti** carrying petroleum or petroleum products, or arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, police equipment and spare parts for the aforementioned, in violation of paragraph 5 above;
7. Decides that the Committee established by paragraph 10 below may authorize on an exceptional case-by-case basis under a no-objection procedure the importation, in non-commercial quantities and only in barrels or bottles, of petroleum or petroleum products, including propane gas for cooking, for verified essential humanitarian needs, subject to acceptable arrangements for effective monitoring of delivery and use;
8. Decides that States in which there are funds, including any funds derived from property, (a) of the Government of **Haiti** or of the de facto authorities in **Haiti**, or (b) controlled directly or

indirectly by such Government or authorities or by entities, wherever located or organized, owned or controlled by such Government or authorities, shall require all persons and entities within their own territories holding such funds to freeze them to ensure that they are not made available directly or indirectly to or for the benefit of the de facto authorities in **Haiti**;

9. Calls upon all States, and all international organizations, to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to 23 June 1993;

10. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

(a) To examine the reports submitted pursuant to paragraph 13 below;

(b) To seek from all States further information regarding the action taken by them concerning the effective implementation of this resolution;

(c) To consider any information brought to its attention by States concerning violations of the measures imposed by this resolution and to recommend appropriate measures in response thereto;

(d) To consider and decide expeditiously requests for the approval of imports of petroleum and petroleum products for essential humanitarian needs in accordance with paragraph 7 above;

(e) To make periodic reports to the Security Council on information submitted to it regarding alleged violations of the present resolution, identifying where possible persons or entities, including vessels, reported to be engaged in such violations;

(f) To promulgate guidelines to facilitate implementation of this resolution;

11. Calls upon all States to cooperate fully with the Committee established by paragraph 10 in the fulfilment of its tasks, including supplying such information as may be sought by the Committee in pursuance of the present resolution;

12. Calls upon States to bring proceedings against persons and entities violating the measures imposed by this resolution and to impose appropriate penalties;

13. Requests all States to report to the Secretary-General by 16 July 1993 on the measures they have initiated for meeting the obligations set out in paragraphs 5 to 9 above;

14. Requests the Secretary-General to provide necessary assistance to the Committee established by paragraph 10 and make necessary arrangements in Secretariat for this purpose;

15. Requests the Secretary-General to report to the Security Council, not later than 15 July 1993, and earlier if he considers it appropriate, on progress achieved in the efforts jointly undertaken by him and the Secretary-General of the Organization of American States with a view to reaching a political solution to the crisis in **Haiti**;

16. Expresses its readiness to review all the measures in the present resolution with a view to lifting them if, after the provisions set forth in paragraphs 5 to 14 have come into force, the Secretary-General, having regard to the views of the Secretary-General of the Organization of American States, reports to the Council that the de facto authorities in **Haiti** have signed and have begun implementing in good faith an agreement to reinstate the legitimate Government of President Jean-Bertrand Aristide;

17. Decides to remain seized of the matter.

United Nations Security Council Resolution (UNSCR) 1160

The letters from the United Kingdom (S/1998/223) and the United States (S/1998/272)

S/RES/1160 (1998)

31 March 1998

RESOLUTION 1160 (1998)

Adopted by the Security Council at its 3868th meeting,

on 31 March 1998

The Security Council,

Noting with appreciation the statements of the Foreign Ministers of France, Germany, Italy, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America (the Contact Group) of 9 and 25 March 1998 (S/1998/223 and S/1998/272), including the proposal on a comprehensive arms embargo on the Federal Republic of Yugoslavia, including **Kosovo**,

Welcoming the decision of the Special Session of the Permanent Council of the Organization for Security and Cooperation in Europe (OSCE) of 11 March 1998 (S/1998/246),

Condemning the use of excessive force by **Serbian** police forces against civilians and peaceful demonstrators in **Kosovo**, as well as all acts of terrorism by the **Kosovo** Liberation Army or any other group or individual and all external support for terrorist activity in **Kosovo**, including finance, arms and training,

Noting the declaration of 18 March 1998 by the President of the Republic of **Serbia** on the political process in **Kosovo** and Metohija (S/1998/250),

Noting also the clear commitment of senior representatives of the Kosovar Albanian community to non-violence,

Noting that there has been some progress in implementing the actions indicated in the Contact Group statement of 9 March 1998, but stressing that further progress is required,

Affirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia,

Acting under Chapter VII of the Charter of the United Nations,

1. Calls upon the Federal Republic of Yugoslavia immediately to take the further necessary steps to achieve a political solution to the issue of **Kosovo** through dialogue and to implement the actions indicated in the Contact Group statements of 9 and 25 March 1998;

2. Calls also upon the Kosovar Albanian leadership to condemn all terrorist action, and emphasizes that all elements in the Kosovar Albanian community should pursue their goals by peaceful means only;

3. Underlines that, the way to defeat violence and terrorism in **Kosovo** is for the authorities in Belgrade to offer the Kosovar Albanian community a genuine political process;

4. Calls upon the authorities in Belgrade and the leadership of the Kosovar Albanian community urgently to enter without preconditions into a meaningful dialogue on political status issues, and notes the readiness of the Contact Group to facilitate such a dialogue;

5. Agrees, without prejudging the outcome of that dialogue, with the proposal in the Contact Group statements of 9 and 25 March 1998 that the principles for a solution of the **Kosovo** problem should be based on the territorial integrity of the Federal Republic of Yugoslavia and should be in accordance with OSCE standards, including those set out in the

Helsinki Final Act of the Conference on Security and Cooperation in Europe of 1975, and the Charter of the United Nations, and that such a solution must also take into account the rights of the Kosovar Albanians and all who live in **Kosovo**, and expresses its support for an enhanced status for **Kosovo** which would include a substantially greater degree of autonomy and meaningful self-administration;

6. Welcomes the signature on 23 March 1998 of an agreement on measures to implement the 1996 Education Agreement, calls upon all parties to ensure that its implementation proceeds smoothly and without delay according to the agreed timetable and expresses its readiness to consider measures if either party blocks implementation;

7. Expresses its support for the efforts of the OSCE for a peaceful resolution of the crisis in **Kosovo**, including through the Personal Representative of the Chairman-in-Office for the Federal Republic of Yugoslavia, who is also the Special Representative of the European Union, and the return of the OSCE long-term missions;

8. Decides that all States shall, for the purposes of fostering peace and stability in **Kosovo**, prevent the sale or supply to the Federal Republic of Yugoslavia, including **Kosovo**, by their nationals or from their territories or using their flag vessels and aircraft, of arms and related material of all types, such as weapons and ammunition, military vehicles and equipment and spare parts for the aforementioned, and shall prevent arming and training for terrorist activities there;

9. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a committee of the Security Council, consisting of all the members of the Council, to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

(a) To seek from all States information regarding the action taken by them concerning the effective implementation of the prohibitions imposed by this resolution;

(b) To consider any information brought to its attention by any State concerning violations of the prohibitions imposed by this resolution and to recommend appropriate measures in response thereto;

(c) To make periodic reports to the Security Council on information submitted to it regarding alleged violations of the prohibitions imposed by this resolution;

(d) To promulgate such guidelines as may be necessary to facilitate the implementation of the prohibitions imposed by this resolution;

(e) To examine the reports submitted pursuant to paragraph 12 below;

10. Calls upon all States and all international and regional organizations to act strictly in conformity with this resolution, notwithstanding the existence of any rights granted or obligations conferred or imposed by any international agreement or of any contract entered into or any license or permit granted prior to the entry into force of the prohibitions imposed by this resolution, and stresses in this context the importance of continuing implementation of the Agreement on Sub-Regional Arms Control signed in Florence on 14 June 1996;

11. Requests the Secretary-General to provide all necessary assistance to the committee established by paragraph 9 above and to make the necessary arrangements in the Secretariat for this purpose;

12. Requests States to report to the committee established by paragraph 9 above within 30 days of adoption of this resolution on the steps they have taken to give effect to the prohibitions imposed by this resolution;

13. Invites the OSCE to keep the Secretary-General informed on the situation in **Kosovo** and on measures taken by that organization in this regard;
14. Requests the Secretary-General to keep the Council regularly informed and to report on the situation in **Kosovo** and the implementation of this resolution no later than 30 days following the adoption of this resolution and every 30 days thereafter;
15. Further requests that the Secretary-General, in consultation with appropriate regional organizations, include in his first report recommendations for the establishment of a comprehensive regime to monitor the implementation of the prohibitions imposed by this resolution, and calls upon all States, in particular neighbouring States, to extend full cooperation in this regard;
16. Decides to review the situation on the basis of the reports of the Secretary-General, which will take into account the assessments of, inter alia, the Contact Group, the OSCE and the European Union, and decides also to reconsider the prohibitions imposed by this resolution, including action to terminate them, following receipt of the assessment of the Secretary-General that the Government of the Federal Republic of Yugoslavia, cooperating in a constructive manner with the Contact Group, have:
 - (a) Begun a substantive dialogue in accordance with paragraph 4 above, including the participation of an outside representative or representatives, unless any failure to do so is not because of the position of the Federal Republic of Yugoslavia or **Serbian** authorities;
 - (b) Withdrawn the special police units and ceased action by the security forces affecting the civilian population;
 - (c) Allowed access to **Kosovo** by humanitarian organizations as well as representatives of Contact Group and other embassies;
 - (d) Accepted a mission by the Personal Representative of the OSCE Chairman-in-Office for the Federal Republic of Yugoslavia that would include a new and specific mandate for addressing the problems in **Kosovo**, as well as the return of the OSCE long-term missions;
 - (e) Facilitated a mission to **Kosovo** by the United Nations High Commissioner for Human Rights;
17. Urges the Office of the Prosecutor of the International Tribunal established pursuant to resolution 827 (1993) of 25 May 1993 to begin gathering information related to the violence in **Kosovo** that may fall within its jurisdiction, and notes that the authorities of the Federal Republic of Yugoslavia have an obligation to cooperate with the Tribunal and that the Contact Group countries will make available to the Tribunal substantiated relevant information in their possession;
18. Affirms that concrete progress to resolve the serious political and human rights issues in **Kosovo** will improve the international position of the Federal Republic of Yugoslavia and prospects for normalization of its international relationships and full participation in international institutions;
19. Emphasizes that failure to make constructive progress towards the peaceful resolution of the situation in **Kosovo** will lead to the consideration of additional measures;
20. Decides to remain seized of the matter.

United Nations Security Council Resolution 1199

The situation in Kosovo (FRY)

S/RES/1199 (1998)

23 September 1998

RESOLUTION 1199 (1998)

Adopted by the Security Council at its 3930th meeting,

on 23 September 1998

The Security Council,

Recalling its resolution 1160 (1998) of 31 March 1998,

Having considered the reports of the Secretary-General pursuant to that resolution, and in particular his report of 4 September 1998 (S/1998/834 and Add.1),

Noting with appreciation the statement of the Foreign Ministers of France, Germany, Italy, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America (the Contact Group) of 12 June 1998 at the conclusion of the Contact Group's meeting with the Foreign Ministers of Canada and Japan (S/1998/567, annex), and the further statement of the Contact Group made in Bonn on 8 July 1998 (S/1998/657),

Noting also with appreciation the joint statement by the Presidents of the Russian Federation and the Federal Republic of Yugoslavia of 16 June 1998 (S/1998/526),

Noting further the communication by the Prosecutor of the International Tribunal for the Former Yugoslavia to the Contact Group on 7 July 1998, expressing the view that the situation in **Kosovo** represents an armed conflict within the terms of the mandate of the Tribunal,

Gravely concerned at the recent intense fighting in **Kosovo** and in particular the excessive and indiscriminate use of force by **Serbian** security forces and the Yugoslav Army which have resulted in numerous civilian casualties and, according to the estimate of the Secretary General, the displacement of over 230,000 persons from their homes,

Deeply concerned by the flow of refugees into northern Albania, Bosnia and Herzegovina and other European countries as a result of the use of force in **Kosovo**, as well as by the increasing numbers of displaced persons within **Kosovo**, and other parts of the Federal Republic of Yugoslavia, up to 50,000 of whom the United Nations High Commissioner for Refugees has estimated are without shelter and other basic necessities,

Reaffirming the right of all refugees and displaced persons to return to their homes in safety, and underlining the responsibility of the Federal Republic of Yugoslavia for creating the conditions which allow them to do so,

Condemning all acts of violence by any party, as well as terrorism in pursuit of political goals by any group or individual, and all external support for such activities in **Kosovo**, including the supply of arms and training for terrorist activities in **Kosovo** and expressing concern at the reports of continuing violations of the prohibitions imposed by resolution 1160 (1998),

Deeply concerned by the rapid deterioration in the humanitarian situation throughout **Kosovo**, alarmed at the impending humanitarian catastrophe as described in the report of the Secretary-General, and emphasizing the need to prevent this from happening,

Deeply concerned also by reports of increasing violations of human rights and of international humanitarian law, and emphasizing the need to ensure that the rights of all inhabitants of **Kosovo** are respected,

Reaffirming the objectives of resolution 1160 (1998), in which the Council expressed support for a peaceful resolution of the **Kosovo** problem which would include an enhanced status for **Kosovo**, a substantially greater degree of autonomy, and meaningful self-administration,

Reaffirming also the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia,

Affirming that the deterioration of the situation in **Kosovo**, Federal Republic of Yugoslavia, constitutes a threat to peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. Demands that all parties, groups and individuals immediately cease hostilities and maintain a ceasefire in **Kosovo**, Federal Republic of Yugoslavia, which would enhance the prospects for a meaningful dialogue between the authorities of the Federal Republic of Yugoslavia and the **Kosovo** Albanian leadership and reduce the risks of a humanitarian catastrophe;

2. Demands also that the authorities of the Federal Republic of Yugoslavia and the **Kosovo** Albanian leadership take immediate steps to improve the humanitarian situation and to avert the impending humanitarian catastrophe;

3. Calls upon the authorities in the Federal Republic of Yugoslavia and the **Kosovo** Albanian leadership to enter immediately into a meaningful dialogue without preconditions and with international involvement, and to a clear timetable, leading to an end of the crisis and to a negotiated political solution to the issue of **Kosovo**, and welcomes the current efforts aimed at facilitating such a dialogue;

4. Demands further that the Federal Republic of Yugoslavia, in addition to the measures called for under resolution 1160 (1998), implement immediately the following concrete measures towards achieving a political solution to the situation in **Kosovo** as contained in the Contact Group statement of 12 June 1998:

(a) Cease all action by the security forces affecting the civilian population and order the withdrawal of security units used for civilian repression;

(b) Enable effective and continuous international monitoring in **Kosovo** by the European Community Monitoring Mission and diplomatic missions accredited to the Federal Republic of Yugoslavia, including access and complete freedom of movement of such monitors to, from and within **Kosovo** unimpeded by government authorities, and expeditious issuance of appropriate travel documents to international personnel contributing to the monitoring;

(c) Facilitate, in agreement with the UNHCR and the International Committee of the Red Cross (ICRC), the safe return of refugees and displaced persons to their homes and allow free and unimpeded access for humanitarian organizations and supplies to **Kosovo**;

(d) Make rapid progress to a clear timetable, in the dialogue referred to in paragraph 3 with the **Kosovo** Albanian community called for in resolution 1160 (1998), with the aim of agreeing confidence-building measures and finding a political solution to the problems of **Kosovo**;

5. Notes, in this connection, the commitments of the President of the Federal Republic of Yugoslavia, in his joint statement with the President of the Russian Federation of 16 June 1998:

(a) To resolve existing problems by political means on the basis of equality for all citizens and ethnic communities in **Kosovo**;

(b) Not to carry out any repressive actions against the peaceful population;

- (c) To provide full freedom of movement for and ensure that there will be no restrictions on representatives of foreign States and international institutions accredited to the Federal Republic of Yugoslavia monitoring the situation in **Kosovo**;
- (d) To ensure full and unimpeded access for humanitarian organizations, the ICRC and the UNHCR, and delivery of humanitarian supplies;
- (e) To facilitate the unimpeded return of refugees and displaced persons under programmes agreed with the UNHCR and the ICRC, providing State aid for the reconstruction of destroyed homes, and calls for the full implementation of these commitments;
6. Insists that the **Kosovo** Albanian leadership condemn all terrorist action, and emphasizes that all elements in the **Kosovo** Albanian community should pursue their goals by peaceful means only;
7. Recalls the obligations of all States to implement fully the prohibitions imposed by resolution 1160 (1998);
8. Endorses the steps taken to establish effective international monitoring of the situation in **Kosovo**, and in this connection welcomes the establishment of the **Kosovo** Diplomatic Observer Mission;
9. Urges States and international organizations represented in the Federal Republic of Yugoslavia to make available personnel to fulfil the responsibility of carrying out effective and continuous international monitoring in **Kosovo** until the objectives of this resolution and those of resolution 1160 (1998) are achieved;
10. Reminds the Federal Republic of Yugoslavia that it has the primary responsibility for the security of all diplomatic personnel accredited to the Federal Republic of Yugoslavia as well as the safety and security of all international and non-governmental humanitarian personnel in the Federal Republic of Yugoslavia and calls upon the authorities of the Federal Republic of Yugoslavia and all others concerned in the Federal Republic of Yugoslavia to take all appropriate steps to ensure that monitoring personnel performing functions under this resolution are not subject to the threat or use of force or interference of any kind;
11. Requests States to pursue all means consistent with their domestic legislation and relevant international law to prevent funds collected on their territory being used to contravene resolution 1160 (1998);
12. Calls upon Member States and others concerned to provide adequate resources for humanitarian assistance in the region and to respond promptly and generously to the United Nations Consolidated Inter-Agency Appeal for Humanitarian Assistance Related to the **Kosovo** Crisis;
13. Calls upon the authorities of the Federal Republic of Yugoslavia, the leaders of the **Kosovo** Albanian community and all others concerned to cooperate fully with the Prosecutor of the International Tribunal for the Former Yugoslavia in the investigation of possible violations within the jurisdiction of the Tribunal;
14. Underlines also the need for the authorities of the Federal Republic of Yugoslavia to bring to justice those members of the security forces who have been involved in the mistreatment of civilians and the deliberate destruction of property;
15. Requests the Secretary-General to provide regular reports to the Council as necessary on his assessment of compliance with this resolution by the authorities of the Federal Republic of Yugoslavia and all elements in the **Kosovo** Albanian community, including through his regular reports on compliance with resolution 1160 (1998);

16. Decides, should the concrete measures demanded in this resolution and resolution 1160 (1998) not be taken, to consider further action and additional measures to maintain or restore peace and stability in the region;

17. Decides to remain seized of the matter.

United Nations Security Council Resolution 1203

The situation in Kosovo

S/RES/1203 (1998)

24 October 1998

RESOLUTION 1203 (1998)

Adopted by the Security Council at its 3937th meeting,

on 24 October 1998

The Security Council,

Recalling its resolutions 1160 (1998) of 31 March 1998 and 1199 (1998) of 23 September 1998, and the importance of the peaceful resolution of the problem of **Kosovo**, Federal Republic of Yugoslavia,

Having considered the reports of the Secretary-General pursuant to those resolutions, in particular his report of 5 October 1998 (S/1998/912),

Welcoming the agreement signed in Belgrade on 16 October 1998 by the Minister of Foreign Affairs of the Federal Republic of Yugoslavia and the Chairman-in-Office of the Organization for Security and Cooperation in Europe (OSCE) providing for the OSCE to establish a verification mission in **Kosovo**(S/1998/978), including the undertaking of the Federal Republic of Yugoslavia to comply with resolutions 1160 (1998) and 1199 (1998),

Welcoming also the agreement signed in Belgrade on 15 October 1998 by the Chief of General Staff of the Federal Republic of Yugoslavia and the Supreme Allied Commander, Europe, of the North Atlantic Treaty Organization (NATO) providing for the establishment of an air verification mission over **Kosovo**(S/1998/991, annex), complementing the OSCE Verification Mission,

Welcoming also the decision of the Permanent Council of the OSCE of 15 October 1998 (S/1998/959, annex),

Welcoming the decision of the Secretary-General to send a mission to the Federal Republic of Yugoslavia to establish a first-hand capacity to assess developments on the ground in **Kosovo**,

Reaffirming that, under the Charter of the United Nations, primary responsibility for the maintenance of international peace and security is conferred on the Security Council, Recalling the objectives of resolution 1160 (1998), in which the Council expressed support for a peaceful resolution of the **Kosovo** problem which would include an enhanced status for **Kosovo**, a substantially greater degree of autonomy, and meaningful self-administration,

Condemning all acts of violence by any party, as well as terrorism in pursuit of political goals by any group or individual, and all external support for such activities in **Kosovo**, including the supply of arms and training for terrorist activities in **Kosovo**, and expressing concern at the reports of continuing violations of the prohibitions imposed by resolution 1160 (1998),

Deeply concerned at the recent closure by the authorities of the Federal Republic of Yugoslavia of independent media outlets in the Federal Republic of Yugoslavia, and emphasizing the need for these to be allowed freely to resume their operations,

Deeply alarmed and concerned at the continuing grave humanitarian situation throughout **Kosovo** and the impending humanitarian catastrophe, and re-emphasizing the need to prevent this from happening,

Stressing the importance of proper coordination of humanitarian initiatives undertaken by States, the United Nations High Commissioner for Refugees and international organizations in **Kosovo**,

Emphasizing the need to ensure the safety and security of members of the Verification Mission in **Kosovo** and the Air Verification Mission over **Kosovo**,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia,

Affirming that the unresolved situation in **Kosovo**, Federal Republic of Yugoslavia, constitutes a continuing threat to peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. Endorses and supports the agreements signed in Belgrade on 16 October 1998 between the Federal Republic of Yugoslavia and the OSCE, and on 15 October 1998 between the Federal Republic of Yugoslavia and NATO, concerning the verification of compliance by the Federal Republic of Yugoslavia and all others concerned in **Kosovo** with the requirements of its resolution 1199 (1998), and demands the full and prompt implementation of these agreements by the Federal Republic of Yugoslavia;
2. Notes the endorsement by the Government of **Serbia** of the accord reached by the President of the Federal Republic of Yugoslavia and the United States Special Envoy (S/1998/953, annex), and the public commitment of the Federal Republic of Yugoslavia to complete negotiations on a framework for a political settlement by 2 November 1998, and calls for the full implementation of these commitments;
3. Demands that the Federal Republic of Yugoslavia comply fully and swiftly with resolutions 1160 (1998) and 1199 (1998) and cooperate fully with the OSCE Verification Mission in **Kosovo** and the NATO Air Verification Mission over **Kosovo** according to the terms of the agreements referred to in paragraph 1 above;
4. Demands also that the **Kosovo** Albanian leadership and all other elements of the **Kosovo** Albanian community comply fully and swiftly with resolutions 1160 (1998) and 1199 (1998) and cooperate fully with the OSCE Verification Mission in **Kosovo**;
5. Stresses the urgent need for the authorities in the Federal Republic of Yugoslavia and the **Kosovo** Albanian leadership to enter immediately into a meaningful dialogue without preconditions and with international involvement, and to a clear timetable, leading to an end of the crisis and to a negotiated political solution to the issue of **Kosovo**;
6. Demands that the authorities of the Federal Republic of Yugoslavia, the **Kosovo** Albanian leadership and all others concerned respect the freedom of movement of the OSCE Verification Mission and other international personnel;
7. Urges States and international organizations to make available personnel to the OSCE Verification Mission in **Kosovo**;
8. Reminds the Federal Republic of Yugoslavia that it has the primary responsibility for the safety and security of all diplomatic personnel accredited to the Federal Republic of Yugoslavia, including members of the OSCE Verification Mission, as well as the safety and security of all international and non-governmental humanitarian personnel in the Federal Republic of Yugoslavia, and calls upon the authorities of the Federal Republic of Yugoslavia, and all others concerned throughout the Federal Republic of Yugoslavia including the **Kosovo** Albanian leadership, to take all appropriate steps to ensure that personnel performing functions under this resolution and the agreements referred to in paragraph 1 above are not subject to the threat or use of force or interference of any kind;
9. Welcomes in this context the commitment of the Federal Republic of Yugoslavia to guarantee the safety and security of the Verification Missions as contained in the agreements

referred to in paragraph 1 above, notes that, to this end, the OSCE is considering arrangements to be implemented in cooperation with other organizations, and affirms that, in the event of an emergency, action may be needed to ensure their safety and freedom of movement as envisaged in the agreements referred to in paragraph 1 above;

10. Insists that the **Kosovo** Albanian leadership condemn all terrorist actions, demands that such actions cease immediately and emphasizes that all elements in the **Kosovo** Albanian community should pursue their goals by peaceful means only;

11. Demands immediate action from the authorities of the Federal Republic of Yugoslavia and the **Kosovo** Albanian leadership to cooperate with international efforts to improve the humanitarian situation and to avert the impending humanitarian catastrophe;

12. Reaffirms the right of all refugees and displaced persons to return to their homes in safety, and underlines the responsibility of the Federal Republic of Yugoslavia for creating the conditions which allow them to do so;

13. Urges Member States and others concerned to provide adequate resources for humanitarian assistance in the region and to respond promptly and generously to the United Nations Consolidated Inter-Agency Appeal for Humanitarian Assistance Related to the **Kosovo** crisis;

14. Calls for prompt and complete investigation, including international supervision and participation, of all atrocities committed against civilians and full cooperation with the International Tribunal for the former Yugoslavia, including compliance with its orders, requests for information and investigations;

15. Decides that the prohibitions imposed by paragraph 8 of resolution 1160 (1998) shall not apply to relevant equipment for the sole use of the Verification Missions in accordance with the agreements referred to in paragraph 1 above;

16. Requests the Secretary-General, acting in consultation with the parties concerned with the agreements referred to in paragraph 1 above, to report regularly to the Council regarding implementation of this resolution;

17. Decides to remain seized of the matter.