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# The United Nations' Paradox: The Battle between Humanitarian Intervention and State Sovereignty

## INTRODUCTION

There seems no greater conflict in the international realm as the one that exists between humanitarian intervention and the notion of sovereignty that every state so strongly embraces. The idea that every state is entitled to autonomous control over its domestic affairs is in a constant struggle with the belief that all individuals have an inherent right to basic freedoms that should never be imperiled. The debate especially erupts when it comes to the United Nations' (UN) intervention into nations for humanitarian purposes. Questions concerning the UN's legal right to intervene into sovereign nations pervade the international sphere, as nations try to define the UN's role and the extent of its power.

Part One of this comment briefly discusses the historical development of the UN Charter and its human rights provisions, as well as the sovereignty provisions contained therein. Part Two explores the legal debate that exists between the anti-interventionists and those who support humanitarian intervention. Part Three examines briefly four case studies in which intervention is justified by humanitarian purposes -- Iraq, Somalia, Haiti, and Rwanda. Part Four analyzes the basis of the problem, how the problem may be reconciled, and the future of this debate between humanitarian intervention and state sovereignty. This comment concludes that the problem that exists between intervention and state sovereignty is one that exists because of inconsistent principles set forth in the UN Charter and inconsistent applications of these provisions. This comment proposes amending the UN Charter to provide clarity to the provisions that are the culprits to the debate, as well as proposes a system of checks on the UN. Once the UN Charter is examined and necessary revamps are in place to resolve issues and confusion, the debate may very well still exist, but on a much smaller scale. If the inconsistencies within the Charter continue to exist, the UN risks losing credibility within the international realm.

## I. HISTORY OF THE UN CHARTER AND THE CONTRADICTIONARY PROVISIONS

### A. *History*

The UN was conceptualized as a result of World War II, as a growing international desire for peace and cooperation among nations developed.<sup>1</sup> The UN and its Charter were the fruits of the 1943 Declaration of Four Nations on General Security.<sup>2</sup> The idea was to bring together four major forces -- the United States, Great Britain, the Soviet Union, and China -- in an attempt to form an international organization to promote international peace and to prevent future atrocities as those experienced in the World Wars.<sup>3</sup> The next year, the proposals to establish the new organization, commonly referred to as the "Dumbarton Oaks proposals," were brought to the discussion table, soon to become the foundation of the UN Charter.<sup>4</sup> In the proposals, the four powers established that the purpose of the organization was to prohibit "the threat or use of force by states against other states."<sup>5</sup> They also agreed to a Security Council whose primary function was to "maintain international peace and security" and that it could use forcible measures to do so if the Security Council determined that peace and security were disrupted.<sup>6</sup> The four powers and representatives from approximately 46 other nations converged to adopt the final proposal in San Francisco in the spring of 1945 and soon thereafter, on October 24, 1945, the UN, under the auspices of the UN Charter, was born.<sup>7</sup>

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1. SEAN D. MURPHY, HUMANITARIAN INTERVENTION, THE UNITED NATIONS IN AN EVOLVING WORLD ORDER, 65 (Procedural Aspects of International Law Series, Vol. 21, 1996).

2. *Id.* at 66.

3. *Id.* See also Frederick J. Petersen, Note, *The Façade of Humanitarian Intervention for Human Rights in a Community of Sovereign Nations*, 15 ARIZ. J. INT'L & COMP. L. 871, 875-76 (1998). (Petersen states that not only were the World Wars key factors in the formation of the UN but the failure of the League of Nations was also a catalyst in the formation).

4. MURPHY, *supra* note 1, at 66.

5. *Id.*

6. *Id.*

7. *Id.* at 67. The UN Charter was signed on June 26, 1945 by 50 countries and Poland, who was not present at the conference, signed it shortly thereafter making the original number of signatories 51. The United Nations, *About the United Nations/ History*, at <http://www.un.org/aboutun/history.htm> (last visited April 1, 2002). The United Nations officially came into existence on October 24, 1945. *Id.* See also RUTH B. RUSSELL, A HISTORY OF THE UNITED NATIONS, THE ROLE OF THE UNITED STATES 1940-1945, 964 (Jeannette E. Muther,

B. *The UN's Right to Intervene, Human Rights – Charter Provisions*

In the aftermath of World War II, the primary goal of the UN, as a collective entity, was to maintain international peace and security, while respecting national sovereignty.<sup>8</sup> It did this through several provisions of the Charter, which lay the foundation to maintain the international balance of power. Article 2(4) of the Charter provides the basic prohibition on the use of force against another: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."<sup>9</sup>

There are, however, two basic exceptions to this prohibition.<sup>10</sup> The first prohibition can be found in Article 51 of the Charter, which permits "individual or collective self-defense" in the event an attack occurs on a Member state.<sup>11</sup> The second exception to the prohibition of force is the equally popular Article 39 (Chapter VII) of the Charter, which authorizes the Security Council, in determining if there is any breach or threat to peace, to take action that it deems necessary to secure the peace.<sup>12</sup> Article 42 extends the Security Council's power by permitting the Security Council to authorize the use of force to "maintain or restore international peace and security."<sup>13</sup> The use of force is generally discouraged

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asst., The Brookings Institution 1958) (giving in-depth coverage of the formation of the UN Charter)

8. MURPHY, *supra* note 1, at 70.

9. UN CHARTER art. 2, para. 4.

10. Christopher C. Joyner & Anthony Clark Arend, *Anticipatory Humanitarian Intervention: An Emerging Legal Norm?*, 10 USAFA J. Leg. Stud. 27, 29 (1999/2000).

11. UN CHARTER art. 51. Article 51 of the UN Charter reads:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in the exercise in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Id.

12. UN CHARTER art. 39. Article 39 of the UN Charter reads, "The Security Council shall determine the existence of any threat to peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." *Id.*

13. UN CHARTER art. 42. Article 42 of the UN Charter reads:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or

within the UN; however, the Security Council retains great power with respect to the use of force under this provision.

The Charter also includes several provisions concerning the promotion of human rights. The human rights provisions that were adopted into the Charter were a result of the efforts of many organizations that lobbied during the 1945 San Francisco Conference for human rights protections to be included as a major part of the Charter.<sup>14</sup> The Preamble of the Charter includes a provision which states that the members of the UN are "determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."<sup>15</sup> The Charter also states as one of the UN's purposes the promotion of "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."<sup>16</sup> Along with various sections of the UN Charter that mention the promotion and maintenance of "human rights and fundamental freedoms for all," Article 55 of the UN Charter re-emphasizes that all Members must recognize a "universal respect for, and observance of, human rights and fundamental freedom for all" and Article 56 makes it a mandatory responsibility of the Members to carry out these human rights protections.<sup>17</sup>

On the other hand, the Charter, seemingly in conflict with itself, also recognizes the very important concept of state sovereignty. Article 2(7) of the Charter provides,

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially

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land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

*Id.*

14. MURPHY, *supra* note 1, at 69.

15. UN CHARTER Preamble.

16. UN CHARTER art. 1, para. 3. The UN Charter, Article 1, Paragraph 3 reads, "[The Purposes of the United Nations are:] To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." *Id.*

17. UN CHARTER art. 55 and 56. There are additional sections of the UN Charter which touch upon human rights in some manner - Chapter IV grants the General Assembly the power to make recommendations to assist "in the realization of human rights and fundamental freedoms..." UN CHARTER art. 13, para. 1. Chapter X of the Charter grants the Economic and Social Council the power to "make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all." UN CHARTER art. 62, para.2. See also MURPHY, *supra* note 1, at 69-82.

within the domestic jurisdiction of any state or shall require the Members to submit such matter to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.<sup>18</sup>

It is easy to see where the conflict arises. On the one hand, the Charter provides for human rights protections and in the event that international peace and security is threatened, the Security Council maintains the power to use force as it deems necessary. On the other hand, states do not want their autonomy infringed upon. There remains no definitive answer to the UN's role, and from this uncertainty stems much legal debate.

## II. THE LEGAL DEBATE

The crux of the debate centers on whether the UN is permitted to intervene within a sovereign state in the event of humanitarian crisis and whether international law provides the vehicle for such intervention.<sup>19</sup> Opponents, and advocates, alike, base their arguments primarily on the UN Charter and its seemingly conflicting provisions.

Those opposed to intervention by the UN ("anti-interventionists") thrust their argument by specific Charter provisions, and lack thereof. These anti-interventionists argue that the principle of humanitarian intervention, which was a well-known proposition at the time the UN's inception, "was not expressly provided for in the Charter in the matter of interstate relations."<sup>20</sup> They further contend that two provisions of the Charter make it very difficult to believe that international law would provide any vehicle for UN intervention.<sup>21</sup> First, they argue that all member states, through Article 2(4), renounce "the threat or use of force against the territorial integrity or political independence of any state," with the exception of self-defense.<sup>22</sup> Second, the anti-interventionists lean on Article 2(7) of the Charter, which provides that the UN is not legally permitted to engage in the affairs

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18. UN CHARTER art. 2, para. 7.

19. T. Modibo Ocran, *The Doctrine of Humanitarian Intervention in Light of Robust Peacekeeping*, 25 B.C. INT'L & COMP. L. REV. 1, 14-15 (2002).

20. *Id.* at 17.

21. *Id.* at 16-17.

22. *Id.* See also *supra* text accompanying note 9.

"which are essentially within the domestic jurisdiction of any state."<sup>23</sup>

Anti-interventionists also support their position with the 1970 Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter. In that Declaration, the General Assembly reaffirmed to the individual states that they have "a duty not to intervene in matters within the domestic jurisdiction of any state, or to disrupt the territorial, or political integrity of another state, in accordance with the Charter."<sup>24</sup> More importantly, non-interventionists extend their legal argument by relying on judgments of the International Court of Justice (ICJ) which have confirmed the sacredness of sovereignty — a sacredness, they believe, that is deeply grounded in custom. In 1986, the ICJ, in *Nicaragua v. United States*, expressed, "the principle of non-intervention involves the right of every sovereign state to conduct its affairs without outside interference...it is part and parcel of customary international law."<sup>25</sup>

The anti-interventionists assert that there is no place in international law for UN humanitarian interventions, as the sovereignty of the state must be respected to the utmost. This position is supported by provisions of the Charter, UN General Assembly

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23. Ocran, *supra* note 19, at 17; see also *supra* text accompanying note 18.

24. The Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter, G.A. Res. 2625, U.N. GAOR, 25<sup>th</sup> Sess., Supp No. 18, at 123, U.N. Doc. A/8082 (1970). The Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter was a product of the twenty-fifth (25<sup>th</sup>) anniversary of the UN Charter. *Id.* at 121. The goal was to "contribute to the strengthening of world peace and constitute a landmark in the development of international law and of relations among states by promoting...the universal application of the principles embodied in the Charter." *Id.* The Declaration reiterates the general propositions set forth in the Charter, re-emphasizing the duty that nations owe to one another to respect and protect sovereignty and the peoples of fellow nations. *Id.* at 121-123. See also Ocran, *supra* note 19, at 14.

25. Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 14, at 106 (June 27). The Nicaragua Case, which does not concern intervention for humanitarian purposes, focuses, rather, on whether the United States was justified, by invoking the Charter (Article 51), in its self-proclaimed "self-defense" act against Nicaragua. *Id.* In its discussion of whether the United States was justified, the International Court of Justice reiterates the importance respecting the sovereignty of other nations. *Id.* The International Court of Justice found, in the end, that the United States had not justified its attack on Nicaragua as a self-defense mechanism and had therefore, "breached its obligation under customary international law not to use force against another state, not to intervene in its affairs, not to violate its sovereignty, and not to interrupt peaceful maritime commerce." *Id.* at 147. The Court then ordered the United States "to cease and refrain from all such acts as may constitute breaches of the foregoing legal obligations." *Id.* at 149. See also Ocran, *supra* note 19, at 14-15.

Declarations, as well as by continual condemnation of states to interfere in the domestic affairs of other states.

On the other side of the table, there certainly is no lack of support for humanitarian intervention. Those who support UN humanitarian intervention ("interventionists") believe that the UN Charter, specifically Article 2(7) of the Charter, has "never been interpreted by the General Assembly and the Security Council as preventing action by the UN in serious cases of human rights violations."<sup>26</sup> Further, some believe that a careful reading of Article 2(4) shows that "the prohibition is not against coercion per se, but rather the use of force for *unlawful* purposes," which in effect does not rule out intervention for humanitarian purposes.<sup>27</sup>

In addition to interpreting these provisions in their own light, interventionists also point to specific Charter provisions that not only provide for human rights protections, but make it a requirement that all member states conform.<sup>28</sup> The reasoning stems from the belief that the Charter, a result of the atrocities of World War II, "left no doubt as to the intimate nexus that the framers perceived to link international peace and security and the most fundamental human rights of all individuals."<sup>29</sup> The interventionists emphasize Article 55 of the Charter as giving the member states specific responsibilities with regard to the "universal observance of human rights and fundamental freedoms."<sup>30</sup> In addition, Article 56 furthers member's responsibility by calling upon them to "take joint and separate action in cooperation with the UN for the achievement of the purposes set out in Article 55."<sup>31</sup>

The Charter provisions concerning human rights are further extended by the Universal Declaration of Human Rights which was adopted by the General Assembly in December 1948.<sup>32</sup> The Declaration provides an array of "civil and political rights and economic, social and cultural rights pertinent to human existence" and basically sets forth standards for human rights protections.<sup>33</sup> In coop-

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26. Ocran, *supra* note 19, at 17; *see also supra* text accompanying note 18.

27. Ocran, *supra* note 19, at 20. (emphasis added).

28. *Id.* at 21.

29. *Id.* at 20-21.

30. UN CHARTER art. 55; *see also supra* note 17 and accompanying text. *See also* Ocran, *supra* note 19 at 21.

31. UN CHARTER art. 56; *see also supra* note 17 and accompanying text.

32. FRANCIS KOFI ABIEW, *THE EVOLUTION OF THE DOCTRINE AND PRACTICE OF HUMANITARIAN INTERVENTION*, 76 (1999).

33. The Universal Declaration of Human Rights, U.N. GAOR, 3d Sess., U.N. Doc. GA/RES/217A (1948). The Universal Declaration of Human Rights was adopted by the General Assembly on December 10, 1948. *Id.* The Declaration calls for the recognition of



eration with the Declaration, the human rights sections of the Charter certainly do make it appear as if the drafters meant the Charter to be a vehicle for a collective arrangement for the protection of human rights.

Interventionists agree that sovereignty certainly is a legal norm falling within the bounds of international law; however, they claim, humanitarian intervention has also been recognized as custom in some circles. In the same year that the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter reiterated respect for sovereignty, the International Law Association expressed to the International Commission on Human Rights that "the doctrine of humanitarian intervention appears to have been so clearly established under customary international law that only its limits and not its existence is subject to debate."<sup>34</sup>

The interventionist school certainly is not without support in fighting the battle against sovereignty. Their argument, too, rests upon Charter provisions, Declarations, as well as some believe, customary international law. Human rights violations, they perceive, are a threat to international peace and security and the Security Council can authorize intervention in order to restore this international peace and security. Most persuasive for the interventionists is the fact that humanitarian interventions have, indeed, been authorized by the Security Council, thus lending to the "legality" of such actions. In recent years, the UN has passed Resolutions providing for intervention for stated humanitarian purposes, but certainly never without much debate.

### III. UN HUMANITARIAN INTERVENTIONS – CASE STUDIES

#### A. *Iraq – 1991*

The Security Council passed Resolution 688 in response to Iraqi repression of many of its own nationals, mainly the Kurdish in-

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"inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." *Id.* It states that respect for human rights is "essential to promote the development of friendly relations between nations." *Id.* It calls upon all Member nations to "cause it [the Declaration] to be disseminated, displayed, read, and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories." *Id.* See also Abiew, *supra*, note 32, at 76-77.

34. International Law Association, *The International Protection of Human Rights by General International Law*, in INTERNATIONAL COMMISSION ON HUMAN RIGHTS, INTERIM REPORT OF THE SUBCOMMITTEE 11 (1970). See also Ocran, *supra* note 19, at 14.

habitants.<sup>35</sup> The mistreatment of the Kurds was found to be a "threat to international peace and security," which prompted the Security Council to authorize the use of force.<sup>36</sup> The "threat to peace and security" came as a result of the mass departure of Kurdish nationals into the neighboring countries.<sup>37</sup>

Resolution 688 demanded that Iraq "cease its repressive acts and permit immediate access by international relief organizations to persons in need of assistance."<sup>38</sup> However, the Resolution was not unlimited in its scope concerning the UN's power to enforce its demands.<sup>39</sup> The Resolution contained no mention of Chapter VII of the Charter, which authorizes the Security Council to use forceful intervention, nor does it mention any "collective enforcement measures."<sup>40</sup> The intervention was to be made by UN forces that would enter the area "to create safe havens for Kurds and to authorize military measures by allied forces."<sup>41</sup> Doubts are easily cast upon the legality of such measures since acts of force were not mentioned in the Resolution.<sup>42</sup>

The purpose of the intervention was not to remedy the internal violations of human rights, but rather it was the external effects of the Iraqi tyranny and this arguably is the first time the transborder effect of human rights violations was considered grounds for UN intervention.<sup>43</sup> The Resolution had precedential worth because "this was the first time that the [Security] Council had characterized severe human rights deprivations having minimal external effects as a threat to international peace and security."<sup>44</sup>

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35. Richard B. Lillich, Article, *The Role of the UN Security Council in Protecting Human Rights in Crisis Situations: UN Humanitarian Intervention in the Post-Cold War World*, 3 TUL. J. INT'L & COMP. L. 1, 6 (1995).

36. *Id.* Lillich makes note that Resolution 688 merely implied "a reference to UN Charter, Chapter VII" by using the words "threat to international peace and security," and later explains that Chapter VII is never directly mentioned in the Resolution. *Id.*

37. *Id.* The Resolution stated that "Iraq's actions 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." *Id.* A war in the region immediately prior to the situation in Iraq was also a catalyst in the Security Council's actions as the tensions in the area "increased the potential for regional instability." Ruth E. Gordon, *Humanitarian Intervention by the United Nations: Iraq, Somalia, and Haiti*, 31 TEX. INT'L. L. J. 43, 49 (1996).

38. Lillich, *supra* note 35, at 6.

39. Gordon, *supra* note 37, at 49.

40. *Id.*

41. *Id.*

42. *Id.* at 50.

43. *Id.* at 49.

44. Lillich, *supra* note 35, at 7.

The dispute over humanitarian intervention and state sovereignty peaked with Resolution 688. Iraq was its own sovereign, complete with a "single, functioning government," leading many states to question the legality of UN humanitarian intervention.<sup>45</sup> The Resolution, however, contemplated the debate as it does reiterate the notion of sovereignty, territorial integrity, and Article 2(7).<sup>46</sup> The drafters of the Resolution were well aware of the issues and carefully constructed it to balance the ends of the delicate debate.

### B. *Somalia* – 1992

In December 1992, Resolution 794 became a central validating device for the Security Council's power as it provided prime justification for UN humanitarian intervention.<sup>47</sup> After determining that "the magnitude of the human rights tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constituted a threat to international peace and security," the Security Council decided that intervention was necessary.<sup>48</sup> Unlike the intervention in Iraq, the Security Council specifically put Chapter VII of the Charter into full effect when it "authorized both the Secretary-General and cooperating Member States 'to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia.'"<sup>49</sup>

"Regional instability" was the Security Council's justification for its intervention in Somalia, but it was Somalia's internal human rights violations that were the actual reasons for the Security Council's use of force.<sup>50</sup> The crisis responded to in Somalia was completely within the boundaries of Somalia, unlike Iraq where the UN acted in response to regional instability due to refugee overflows.<sup>51</sup> In unprecedented action, the Security Council held that solely *internal* human rights violations justified forceful intervention. The internal crisis in Somalia was enough to be con-

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45. Gordon, *supra* note 37, at 50.

46. *Id.*

47. Lillich, *supra* note 35, at 7.

48. *Id.*

49. *Id.*

50. Gordon, *supra* note 37, at 51.

51. *Id.*

sidered "a threat to international peace, despite the absence of transboundary impact."<sup>52</sup>

As evidenced by its actions in Iraq and Somalia, the Security Council has justified its use of force by determining that threats to international peace can exist when there is *regional* instability as well as purely *internal* instability, when both "produce severe and widespread human rights deprivations."<sup>53</sup> The latter being a landmark in the "legality and legitimacy of humanitarian intervention."<sup>54</sup>

### C. *Haiti - 1994*

The UN pushed the envelope once again when drafting UN Resolution 940. It stretched even further the fine line of defining a "threat to international peace and security." The Resolution was a response to Haiti's state of political affairs and the effect of such affairs on the declining social order, civil liberties violations, and refugee flows.<sup>55</sup> The Security Council justified its action to remedy "significant further deterioration of the humanitarian situation in Haiti."<sup>56</sup> The Security Council saw the military government that was in place in Haiti as a threat to peace and security in the region and authorized the use of force.<sup>57</sup> The Resolution demanded "the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti."<sup>58</sup>

Naturally, this action prompted discussion. Some argue that Resolution 940 authorized the "purest [form of] humanitarian intervention to date" while others argue that it was not humanitarian at all, because of its purely political agenda.<sup>59</sup> Resolution 940 represents, once again, a significant precedent for UN-authorized humanitarian intervention -- not only because of the great success of the mission, but because of the effect that it had on the advancement of defining UN humanitarian intervention. "When

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52. *Id.*

53. Lillich, *supra* note 35, at 8.

54. Gordon, *supra* note 37, at 51.

55. *Id.* at 52.

56. Lillich, *supra* note 35, at 10.

57. *Id.*

58. *Id.*

59. *Id.* at 9. Lillich claims that the situation in Haiti presented the UN with "the purest [form of] humanitarian intervention to date." *Id.* Gordon, on the other hand argues that the situation was not humanitarian at all because the primary agenda was to restore a legitimate government. Gordon, *supra* note 37, at 52-3.

there is political will, the UN possesses all the authority it needs to protect human rights in crisis situations."<sup>60</sup>

#### D. Rwanda – 1994

Rwanda exemplifies quite a different situation than Iraq, Somalia, and Haiti in the evolution of UN intervention. In Rwanda, even though civil conflict abounded and genocide was widespread, making it a "classic case for . . . intervention," the UN did not take forcible action to prevent further atrocities.<sup>61</sup> Resolution 918 called for aid to displaced refugees and civilians and the "creation and maintenance of secure humanitarian relief operations."<sup>62</sup> However, no UN troops were ever deployed, one reason "being that member states made no commitments to provide the requisite number of troops for such an undertaking."<sup>63</sup> The reason for the lack of support is unknown; however, speculation centers on the intervention possibly resulting in great loss for the UN members committing troops – a risk they were not willing to take for reasons thought to be outside of the interests of those UN members.<sup>64</sup>

Ultimately, France, which had historical ties to Rwanda, unilaterally undertook the responsibility of intervening.<sup>65</sup> France decided, two months into the mission, that the greatest remedy that they could provide would be the "setting up of a security zone in southwestern Rwanda and ultimately handed over the task to UN peacekeeping forces composed of African units."<sup>66</sup>

These four case studies are not the only humanitarian interventions that have occurred, but certainly they paint a picture of the diversity that exists when defining humanitarian efforts and the Security Council's legitimacy in utilizing its power under Chapter VII, when interfering with the sovereignty of states. The variety of the situations may provide us with little understanding of the UN's rationale to intervene or not to intervene, or even its actual "legal" power to intervene, but, most importantly, this diversity illustrates the legal debate and the need for clarification of the UN's role.

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60. Lillich, *supra* note 35, at 11.

61. Gordon, *supra* note 37, at 55.

62. ABIEW, *supra*, note 32, at 193.

63. *Id.*

64. Gordon, *supra* note 37, at 55.

65. ABIEW, *supra*, note 32, at 194.

66. *Id.*

#### IV. THE ROOT OF THE PROBLEM & THE FUTURE OF UN HUMANITARIAN INTERVENTION

##### A. *The Root of the Problem*

It is well established that opinion is divided when it comes to the legality of UN intervention for humanitarian purposes. Before speculating into the future of humanitarian interventions and the UN, a consideration of proposed core problems, complete with suggested solutions is necessary.

Provisions within the Charter, which seemingly conflict with each other, are an obvious problem in the face of this debate. Is the UN supposed to always ignore the stated humanitarian responsibilities as set forth in the Charter for the respect of territorial integrity, also set forth in the Charter? Perhaps it is time for the Charter to be revamped to include additional provisions and more definitive statements as to the legality of interventions.

The problem primarily is a "definitional" one. Definitional problems that arise are clearly illustrated by the four case studies above. We see in Iraq, Somalia, Haiti, and Rwanda a myriad of situations in which "threat to international peace and security" and "humanitarian intervention" are defined differently. UN members need to convene for consensus on the definition of "threat to international peace and security." It is this threat that grants the Security Council power to authorize intervention. With a more settled definition, it would be easier to know when the UN is "legally" authorized to intervene – even for humanitarian purposes. Once it has been determined that there has been a threat to the international peace, then it will make it a far easier task to determine how far the UN can stretch its arm into the sovereignty of a state for humanitarian purposes.

On that note, there exists no single definition of "humanitarian intervention," and it has proven to be difficult to define because of the many faces it has exemplified. Traditionally, it referred more to "forcible interventions designed to stem large-scale human-rights crises."<sup>67</sup> However, the term has come to include "interventions launched to ensure the delivery of humanitarian assistance to severely deprived populations."<sup>68</sup>

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67. Gordon, *supra* note 37, at 44.

68. *Id.* at 44-45.

The following all-encompassing definition of humanitarian intervention is used often throughout the international community: "Humanitarian intervention is the threat or use of force by a state, group of states, or international organization primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights."<sup>69</sup> This definition, itself, is not set in stone and still leaves room for much interpretation – it may not be so clear what is meant by "primarily" and "widespread deprivations of internationally recognized human rights." Sean D. Murphy, author and Professor of International Law at George Washington University, explains, "Those skeptical of the legality and legitimacy of UN humanitarian intervention will prefer greater clarity regarding the type and level of human rights violations that justify such actions."<sup>70</sup>

Another clarity problem stems from the fact that human rights *are* mentioned quite frequently in the Charter, but unfortunately, there has not yet been any system established to accomplish humanitarian goals.<sup>71</sup> The Charter simply states that members have a responsibility to *promote* human rights.<sup>72</sup> "Promote" could potentially be defined in many ways -- some countries may define it to include intervention and others may not; therefore, there are inconsistencies among the states on how or when it is appropriate for them to act.<sup>73</sup> In order to give human rights protection the attention it needs to survive, there needs to be more consistency and less confusion among member states.

There are also support and cohesion concerns among the members that make humanitarian intervention the hot debate that it is. In addition to the definitional problems of the UN Charter, UN members are often not willing to put forth the military units and the time devotion necessary for large humanitarian interventions.<sup>74</sup> A reason for this being that there is little advantage to the member state in return for the potential loss of lives they may incur.<sup>75</sup> The case study of Rwanda provides a prime example of this lack of support among UN members. Professor Murphy refers to this problem as "the schizophrenia" of UN member states, "par-

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69. MURPHY, *supra* note 1, at 11-12.

70. *Id.* at 324.

71. Petersen, *supra* note 3, at 878.

72. *Id.* at 879.

73. *Id.*

74. MURPHY, *supra* note 1, at 320.

75. *Id.*

ticularly the major powers upon which these interventions depend."<sup>76</sup> Professor Murphy confirms that the "schizophrenia" among states may be caused by "lack of definition in the objectives sought by humanitarian intervention."

With some restructuring and rewording of the UN Charter, clarity problems and conflicting provision problems can be resolved. While this certainly is not an exhaustive list of all of the clarity problems that exist within the Charter, it is a focus on the provisions from which most problems stem. A "cleaned-up" Charter may provide some, albeit, not complete, reconciliation of the existing problem, and perhaps, even result in an increase of state support for humanitarian concerns.

### B. *The Legal Future*

Without serious consideration for a "renewed" Charter, the UN Security Council risks losing credibility, as its authorizations for humanitarian interventions will continue to be criticized for their inconsistencies.<sup>77</sup> Some authorizations, such as the ones in Iraq and Haiti, "gave credibility to the decisions of the Security Council" because these were arguably more "humanitarian" in nature.<sup>78</sup> However, the Security Council's actions in Somalia and Rwanda were arguably "largely ineffective and not credible."<sup>79</sup> The inconsistencies of the Security Council's actions, as a result of an unclear Charter, may infect the future credibility of the Security Council in all areas, humanitarian or not.<sup>80</sup>

In order to avoid the problems with Security Council credibility, perhaps a system of checks should be implemented. As of now, there seems to have been few limitations on the Security Council's actions, taken under Chapter VII.<sup>81</sup> Far-fetched it may seem, but the International Court of Justice perhaps could take a more ac-

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76. *Id.* at 319-320.

77. *Id.* at 321.

78. *Id.*

79. MURPHY, *supra* note 1, at 321.

80. *Id.*

81. Lillich, *supra* note 35, at 12. Lillich discusses the *Lockerbie case*, (*Libya v. UK, Libya v. U.S.* 1992 I.C.J. 3) in which Libya brought an action before the International Court of Justice challenging the Security Council Resolution to authorize use force under its Chapter VII power. *Id.* The International Court held that the Resolution "preempted its jurisdiction." *Id.* Lillich goes on to say that "it is difficult to locate in the Charter substantive limitations on the Council's actions taken under Chapter VII." *Id.* See also, W. Michael Reisman, *The Constitutional Crisis in the United Nations*, 87 AM. J. INT'L L. 83, 92 (1993).



tive role in standing check over the Security Council to ensure future humanitarian interventions are within the scope of the Council, as set forth in the Charter. The future of humanitarian intervention, the Security Council, and the UN as a whole, rests on developing some consistency among actions, and striking a balance between sovereignty and humanitarian intervention. Whether or not the suggested solutions will ever manifest themselves rests only in the hands of the UN and its members; therefore, we can only speculate on the future of the legal status of UN involvement in humanitarian affairs of states.

The notion of sovereignty is certainly established as a norm in international law and it is easy to see that states hold their sovereignty in the highest regard. Although the UN Charter does establish sovereignty as being practically "absolute," it does also recognize several times over, the importance of human rights protections. There is a trend, as we can see with the four case studies of the 1990's, moving toward striking a balance between sovereignty and UN humanitarian intervention.

The future will see the elimination of all "absolutes" – *absolute* sovereignty and the *absolute* right to intervene – from the debate. As we inch toward the center of the table, between sovereignty and intervention, we see that perhaps we are effectuating the true intent of the framers of the Charter. When the Charter was drafted, in the shadow of World War II, the goal was two-fold: to promote international peace and to prevent further atrocities as those that happened in the World Wars.<sup>82</sup> In searching for that middle ground, Members should often remind themselves of the framers' intent.

A balancing test has been proposed by author and Princeton International Law Professor Richard Falk who believes the best way to determine what constitutes humanitarian intervention and when intervention is permissible, is to use somewhat of a sliding scale.<sup>83</sup> He states that there is a "legal and moral requirement" to intervene and that, when such atrocities occur, state sovereignty needs to be severely restricted and intervention becomes a necessity.<sup>84</sup> He adds that when mass suffering and atrocities occur, the

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82. MURPHY, *supra* note 1, at 66. See also *supra* notes 3 and 8 and accompanying texts.

83. Richard Falk, *The Complexities of Humanitarian Intervention: A New World Order Challenge*, 17 MICH. J. INT'L L. 491, 503 (1996).

84. *Id.*

sovereign status of a state ceases;<sup>85</sup> therefore, sovereignty cannot be *violated* by UN humanitarian ventures.

As far as the future of enforcing these humanitarian concerns, the “loss” of sovereignty may be by far the best enforcement mechanism. The balance may be a tough one to strike but middle ground will be found -- the balancing proposition is one that the framers of the Charter would absolutely endorse. This proposition rings true in the words of Secretary General Kofi A. Annan as he confirms that the UN Charter was made to “protect individual human beings, not those who abuse them.”<sup>86</sup>

#### IV. CONCLUSION

The UN Charter, with its inception in 1945, came about to form an organization to promote international peace and security, and to avoid a third World War. The Charter provides for both the utmost respect for state sovereignty, as well as protection from human rights violations. There are conflicts and clarity problems within the Charter, which have led states to question the credibility of the Security Council and its role to authorize humanitarian interventions. Resolving the conflicts within the Charter will provide some help in determining the future of the legality of UN action. “International lawyers and policymakers must strive to improve the ability of the UN, under the auspices of its Charter, to undertake or authorize states to undertake such intervention.”<sup>87</sup>

The legal debate over whether the UN can interfere into state integrity to resolve human rights violations is a topic that will exist well into the future. The future holds a balance between state sovereignty and humanitarian interventions; however, there will always be, no matter what the proposed remedy, those who are strictly opposed to UN intervention and those who advocate UN intervention. As the debate continues, it is most important that the main focus, rests not on personal opinion, but rather, on the *legality* of the issue and the UN Charter’s true purpose – a world with respect for both sovereignty and human rights.

*Jennifer L. Czernecki*

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85. *Id.*

86. Kofi A. Annan, *Two Concepts of Sovereignty*, (THE ECONOMIST, Sept. 18, 1999), available at <http://www.un.org/Overview/SG/kaecon.htm>. Annan declares, “When we read the Charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them.” *Id.*

87. MURPHY, *supra* note 1, at 321.

