

FILIPA DELGADO LOURENÇO

# HUMANITARIAN INTERVENTION IN INTERNATIONAL LAW

**A study on the specific issue of the legality  
of unauthorized interventions**

*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?*

*If, in those dark days leading up to the genocide, a coalition of states had been prepared to act in defense of the Tutsi population, but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold?*

**Kofi Annan**

Speech to the 54<sup>th</sup> Session of the General Assembly, 20 September 1999

**Master Dissertation on Public International Law  
University of Macau, Faculty of Law  
December, 2005**

# TABLE OF CONTENTS

Table of Contents.....	i
------------------------	---

Abbreviations.....	v
--------------------	---

## INTRODUCTION

1. Opening remarks.....	1
2. Key research questions and issues.....	4
3. Scope and limitation.....	5
4. Methodology.....	6
5. Literature review.....	7
6. Chapter organization.....	8

## CHAPTER ONE - DEFINITION OF HUMANITARIAN INTERVENTION

1. Introduction.....	13
2. Different definitions of the term.....	15
3. Components of the definition.....	17
3.1. Violation of human rights.....	17
3.2. Absence of permission by the target state.....	18
3.3. Use of military force.....	18
3.4. Agency of intervention.....	19
3.5. Beneficiaries of intervention.....	20
4. Definition adopted.....	21

## CHAPTER TWO - HISTORICAL BACKGROUND OF THE DOCTRINE OF HUMANITARIAN INTERVENTION

1. Introduction.....	23
2. Ancient legal traditions.....	23
3. Just war theories.....	25
4. Towards a <i>jus ad bellum</i> .....	31
5. Interventions in 19 <sup>th</sup> and in early 20 <sup>th</sup> centuries.....	33
5.1. Great Britain, France and Russia in Greece (1827-30).....	34
5.2. France in Syria (1860-61).....	35
5.3. Russia in Bosnia, Herzegovina and Bulgaria (1877-78).....	36
5.4. The United States in Cuba (1898).....	37
5.5. Greece, Bulgarian and Serbia in Macedonia (1913).....	38
6. <i>Status quo</i> before the UN Charter.....	38

## CHAPTER THREE - HUMANITARIAN INTERVENTION AND THE UNITED NATIONS CHARTER

1. Introduction.....	43
2. Overview on the prohibition of the use of force in the 20 <sup>th</sup> century.....	45
3. The Charter regime on the prohibition against the use of force.....	48
3.1. The International Court of Justice interpretation.....	54
3.2. Human rights provisions.....	56
3.2.1. <i>The core of human rights</i> .....	59
3.3. Conflicting United Nations goals?.....	65
3.4. Sovereignty: a brief overview.....	67

HUMANITARIAN INTERVENTION IN INTERNATIONAL LAW  
*A study on the specific issue of the legality of unauthorized interventions*

---

3.4.1. <i>Concept of sovereignty</i> .....	69
3.4.2. <i>Limits of sovereignty</i> .....	73
3.4.3. <i>Responsibility to protect?</i> .....	78
3.5. <i>A humanitarian interpretation of the Charter</i> .....	82
3.5.1. <i>Re-interpreting Article 2(4)</i> .....	86
3.5.2. <i>Re-interpreting Article 2(7)</i> .....	89
3.5.3. <i>The (in) effectiveness of the UN Security Council</i> .....	90
4. <i>Evaluation of the debate</i> .....	93

**CHAPTER FOUR - UNAUTHORIZED HUMANITARIAN INTERVENTION  
IN PRACTICE AFTER UNITED NATIONS CHARTER**

1. <i>Introduction</i> .....	99
2. <i>Humanitarian interventions during the Cold War (1945-1989)</i> .....	101
2.1. <i>Selection of cases</i> .....	102
2.2. <i>India Intervention in East Pakistan (1971)</i> .....	105
2.2.1. <i>Background</i> .....	105
2.2.2. <i>Justifications</i> .....	107
2.2.3. <i>International reaction</i> .....	109
2.2.4. <i>Remarks</i> .....	111
2.3. <i>Vietnam intervention in Cambodia (1978)</i> .....	112
2.3.1. <i>Background</i> .....	113
2.3.2. <i>Justifications</i> .....	113
2.3.3. <i>International reaction</i> .....	115
2.3.4. <i>Remarks</i> .....	121
2.4. <i>Tanzania intervention in Uganda (1979)</i> .....	123
2.4.1. <i>Background</i> .....	124
2.4.2. <i>Justifications</i> .....	125
2.4.3. <i>International reaction</i> .....	127
2.4.4. <i>Remarks</i> .....	131
2.5. <i>Legal significance of the cases</i> .....	134
3. <i>Humanitarian interventions after the Cold War</i> .....	137
3.1. <i>Selection of cases</i> .....	138
3.2. <i>Northern and Southern Iraq Intervention (1991-1992)</i> .....	139
3.2.1. <i>Background</i> .....	139
3.2.2. <i>Justifications</i> .....	144
3.2.3. <i>International reaction</i> .....	150
3.2.4. <i>Remarks</i> .....	151
3.3. <i>The ECOWAS intervention in Liberia (1990-1992)</i> .....	152
3.3.1. <i>Background</i> .....	152
3.3.2. <i>Justifications</i> .....	154
3.3.3. <i>International reaction</i> .....	155
3.3.4. <i>Remarks</i> .....	157
3.4. <i>The ECOWAS intervention in Sierra Leona (1997-1998)</i> .....	158
3.4.1. <i>Background</i> .....	158
3.4.2. <i>Justifications</i> .....	159
3.4.3. <i>International reaction</i> .....	161
3.4.4. <i>Remarks</i> .....	161
3.5. <i>The NATO intervention in Kosovo</i> .....	162
3.5.1. <i>Background</i> .....	162
3.5.2. <i>Justifications</i> .....	167
3.5.3. <i>International reaction</i> .....	173
3.5.4. <i>Remarks</i> .....	175
3.6. <i>Legal significance of the cases</i> .....	179

TABLE OF CONTENTS

**CHAPTER FIVE - THE DEBATE SURROUNDING UNAUTHORIZED  
HUMANITARIAN INTERVENTION**

1. Introduction.....183

2. Moral arguments.....185

    2.1. Realists and Pluralists.....185

    2.2. Solidarists.....187

    2.3. *Pros* and *contras* of Pluralist and Solidarist conceptions.....190

3. Doctrinal positions.....195

    3.1. Illegality.....195

    3.2. Legality.....198

    3.3. State of necessity.....199

    3.4. "Excusable breach".....202

    3.5. Customary norm.....203

    3.6. Right of humanitarian intervention.....206

4. Evaluation of the debate.....208

5. Toward criteria for the conduct of unilateral intervention.....213

    5.1. Attempts at regulation.....217

        5.1.1. *Grave violations of human rights*.....220

        5.1.2. *Failure of the peaceful settlement of disputes: when to intervene?*.....225

        5.1.3. *Security Council inaction*.....229

        5.1.4. *Intervening party*.....231

        5.1.5. *Humanitarian objective or humanitarian outcome?*.....233

    5.2. Other criteria for the legality.....235

        5.2.1. *Warning*.....235

        5.2.2. *Necessary and proportionate use of force*.....235

        5.2.3. *Compliance with International Humanitarian Law*.....237

        5.2.4. *Limited military engagement*.....239

        5.2.5. *Post-conflict reconstruction*.....240

        5.2.6. *Other related issues*.....243

    5.3. Final remarks.....245

**CONCLUSIONS**.....247

**Bibliography**.....259