# AN APPRAISAL OF THE DOCTRINE OF NON-INTERVENTION IN INTERNATIONAL LAW

**BY**


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*SEPTEMBER, 2014*

# DECLARATION

I declare that the work in this Thesis entitled “An Appraisal of the Doctrine of Non-Intervention in International Law” has been carried out by me in the Department of Public Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree or diploma at this or any other institution.

**Mustapha Shehu SHEKA** **Signature** _____ **Date** _____

# CERTIFICATION

This thesis entitled “An Appraisal of the Doctrine of Non-Intervention in International Law” by Mustapha Shehu SHEKA meets the regulations governing the award of Degree of Master of Laws (LL.M) of Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

| | | |
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## DEDICATION

This thesis is dedicated to my beloved mother HAJIYA FATIMA ISHAQ, for her constant prayers, moral, academic and financial support that led my education to this level, and in memory of my late father ALHAJI SHEHU SHEKA, may his gentle soul rest in perfect peace. Ameen

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the ultimate thanks and Glory be to Almighty Allah for everything done to me.

Finally, whatever credit this piece of work deserves is shared by them and others not mentioned. But I remain solely responsible for all inadequacies, mistakes and omissions found in this research work. The struggle, for further research, improvements and of course, add and drop, continues. This is so because, the subject of Non-Intervention in International Law is dynamic, not static, it is a living course, and not necessary abstract in nature.

# ABSTRACTS

*Under the Charter of the United Nations, intervention is absolutely prohibited in matters that are purely domestic to states. However, notwithstanding this general rule of non-intervention, there are happenings that though purely internal to states, have the capability to threaten international peace and security. The United Nations Charter has recognized these happening as worthy justification for intervention. Examples are self defence and authorization by the UN Security Council. Other exceptions have been created under customary international law such as humanitarian intervention, etc However, within the last 69 years so many events have happened as a result of which the rule of non-intervention has been widely breached majority of which could be justified on grounds of economic, cultural, social and political imperatives. Therefore, the task of this thesis is to examine states practice as it affects the principle of non-intervention by creating diplomatic, political and economic problems throughout the globe. It is against this background that this research tries to analyse modern practice of states at international law to see that to what extent the principle of non-intervention has been abused. To achieve this, a doctrinal method of research was adopted. After analysing the principle of non-intervention, the research concludes that the principle is meant to protect and preserve the territorial integrity, political independence and sovereign equality of states. Consequently, all forms of illegal interventions constitute violation of the Charter of the UN. However, it is found that states still intervene illegally in many parts of the world. It is recommended that some coherence be brought in to the principle of non-intervention and the application of the exceptions to the principle be carefully defined.*

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Leiden Journal of International Law (2009)

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## ABBREVIATIONS

| | |
|---|---|
| AJIL | American Journal of International Law |
| ECOMOG | ECOWAS Monitoring Group |
| ECOWAS | Economic Community of West African States |
| G.A | General Assembly |
| ICJ | International Court of Justice |
| ICJR | International Court of Justice Report |
| IMF | International Monetary Fund |
| NATO | North Atlantic Treaty Organization |
| NGO | Non Governmental Organisation |
| NPFL | National Patriotic Front of Liberia |
| OECS | Organisation of Eastern Caribbean States |
| RES | Resolution |
| UN | United Nations |
| UNC | United Nations Charter |
| UNGA | United Nations General Assembly |
| UNOCI | United Nations Operation in Cote d'Ivoire |
| USA | United State of America |
| USSR | Union of Soviet Socialist Republics |

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# CHAPTER ONE

## 1.0 GENERAL INTRODUCTION

### 1.1 Background of the Study

The Charter of the United Nations was signed on the 26th of June, 1945 in San Francisco United States of America. The Charter came into force on the 24th of October, 1945[1]. Sequel to the meeting and signing of the Charter, many meetings were held at various places[2] as a result of what was considered to be threat to the international community. This threat had its own origin from what happened immediately after the First World War and indeed, during the Second World War. For example, the world-wide economic recession of the late twenties and thirties, the risk in popularity of anti democratic and nationalist doctrines, the disintegration and collapse of the League of Nations. Others included aggressive force of Italian fascism, German Nazism and Japanese militarism. All these were recognized as threats to the international peace and security, which needed to be stamped out for peace and security of the International community.

[1] See Introductory to Note the Statute: Charter of the UN Statute of the International Court of Justice, United Nations. New York pp. 1-2

[2] Moscow Conference of October 19-30, 1943 Tehran Conference of December 1, 1943; Dumberton Oaks Meeting from August 21-Sep 28 Yalta
Conference of Feb 3-11 1945 etc.

In several meetings that were held, member states agreed that complete victory over their enemies was a necessary prerequisite for the defense of life, liberty, independence, religious freedom and for the preservation of human rights and justice in their own lands as well as in other places. They also agreed to engage in a common struggle against savage and brutal forces seeking to subjugate the world[3]. By the Declaration, each signatory government pledged itself to employ its full resources, military and economic, against those members of the tripartite pact and its adherents with which such governments were at war and to co-operate with Governments signatories thereto, and not to make separate armistice or peace with enemies.

However, during the preparation of the Charter, Member States agreed to draw a line between activities, which were regarded as purely domestic, and those, which were within the realm of international domain. So at the end, the principle of non-intervention was inserted into the United Nations Charter. Thus, Article 2 of the UN Charter provides inter alia that: “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such

[3] UN, Charter 1945, Op. Cit, p.1 .

matters to settlement under the present Charter.[4]" This is what is commonly known as the principle of non-intervention. Since then the principle have been abused by international community.

## 1.2 Statement of the Problem

Since the signing of the United Nations Charter on October 24, 1945 illegal intervention of one state by another at international level seems to have continued unchecked. Since human activities are not static but flexible, there occurred many changed circumstances, interests and priorities. Many concepts, ideologies, philosophies and norms have evolved under international law. These have called for a review of the old initial idea or conception of the principle of non-interference[5] 69 years after the signing and coming into effect of the principal Charter of the United Nations. For example in 1945, the priority of the United Nations was how to prevent further international wars, how to promote international peace and security by way of coming together of the international community and to agree on peace agenda which was thought to be the only panacea for peace and security.

However, between 1945 and now (year 2014) many international events took place which, though not totally overtaking the original

[4] Art. 2 (7), Ibid
[5] Ibid.

concerns of the United Nations but are equally fundamental to international peace and security. These include the idea of fundamental human rights and basic freedoms, the principle of humanitarian law (arm conflicts), the need for democracy and good governance, the problem of multiple party system and the principle of self determination. Recently, coup d'etats, elections, have called for illegal intervention of the United Nations or first-world countries into the domestic activities of the third world countries. Thus, in recent times, we have noticed that there is a deepening or widening concept of what was originally conceived as non-intervention and what the present conception of the principle of non-intervention means such as political, economic and diplomatic pressures. Therefore, the task of this work is to examine states practices as they affect the principle of non-intervention.

## 1.3 Aim and Objectives of the Study

The aim of this research is to examine critically the principle of non-intervention in international law with a view to realizing the following objectives: -

i. To what extent has the principle of non-intervention been abused?

ii. To make recommendations or suggestions, as to how to review the law of non-intervention.

## 1.4 Scope of the Study

The scope of the research is principally confined to the principle of non-intervention as enshrined in Art. 2(7) of the UN charter, basically by considering the words and sprit of the charter. This does not preclude the application of international norms and treaties as well as domestic legislations to the discussion of the principle, including the interpretations by law courts and arguments of various writers.

## 1.5 Literature Review

By the provisions of Art. 2(7) of the UN charter of 1945, forbid all states or groups of states to intervene directly or indirectly in the internal or external affairs of other states[6]. This is what scholars, writers and judicial decisions termed as principle of non-intervention. In many text books of international law, one finds discussions, by learned scholars[7], and decisions by law courts on principle of non- intervention. According to Hingorani, R.C., "interference has got to be dictatorial in order to constitute

[6] Nicaragua V. U.S.A. ICJ Report (1986) p. 108-8

[7] Reisuman, W.M., Coercion and Self-determination: Containing charter article 214) of the UN 78, American Journal of International Law (1984)
Pp.624-5

intervention.[8]" Further, the learned author concluded that ……if it is not dictatorial, it does not amount to intervention. It is most respectfully submitted that, there are interventions that are not dictatorial but are recognized by the UN and international community. Example, humanitarian intervention.

However to Professor Richard J.E., the principle prohibits "not only armed intervention, but all direct or indirect intervention of a political or economic nature and political or economic pressure aimed at preventing peoples from choosing their social system or from taking economic measures to further interest in their own country[9]. With due respect to the learned author there are some interventions that are legal, for example intervention by request to the legitimate authorities against insurgents, whatever the effect which that help may have on the political future of the state[10].

Yet, again according to another authority Professor Shaw while explaining the principle of domestic jurisdiction states that "it follows from the nature of sovereignty of states that "while a state is supreme internally, that is within its territorial frontiers, it must not intervene in the domestic

[8] Hingorani, R.C., Modern International Law. Oxford & IBH Publishing Co. PVT.ltd, New Delhe Bombay Calcutta, 3rd Edition (1985) P. 303.
[9] Richard, J.E., International law and the Revolutionary State. Oceana Publication, Dobbos Ferry, N.J.A.W. Sijthoff –Leiden. (1972) p.57
[10] Michael, A., A Modern Introduction to International Law. Boston Sydney Wellington, London, 6th Edition (1998) Pp. 284-5

affairs of another nation." According to him, this duty of non-intervention within the domestic jurisdiction of states provides for the shielding of certain states activities from the regulation of international law[11].

However, the influence of international law is beginning to make itself felt in areas hitherto as subject to the state's exclusive jurisdiction through adopting resolutions by UN relating to the internal policies of member states. For example, the treatment by a country of its own nationals is now viewed in the context of international human rights regulations.

Also, Umozurike[12] while making a general examination of nature of politics under international law considered that non- intervention doctrine has for a very longtime being on the discussion in the history of international law this is so when he said:- "the new states…….jealous of their sovereignty and in order to protect themselves from the meddlesomeness of their former colonial masters, they emphasized the principle of exclusive jurisdiction…….. " It is submitted that, even though the explanation by the learned author relates to non-intervention because he discussed the issue of sanctity of every polity. The discussion was not directly on non-intervention, despite the fact that, the explanation has the same effect with the subject matter under review.

[11] Shaw, M.N. International Law. Cambridge University Press, London, 5th Edition (2003) p.574.
[12] Umokurike, U.O., Introduction to International Law. Spectrum Publishers, Zaria, (2006) p.12

Harris, on his part makes a different caption of the subject matter, when he considers it, as a territorial sovereignty of a state when the state within its territorial domain exercises jurisdiction over persons and properties to the exclusion of other states[13]. The learned author did not go straight to the point of non-intervention as envisaged in Art. 2(7) of the UN Charter despite the similarity in effect.

According to, Professor Wright, while making general discussion on non-military intervention states that "states are prohibited by the charter of the UN from using or threatening to use force in international relations unless in individual or collective self-defence against armed attack, under authority of the UN, or by invitation of the state in whose territory force is to be used[14]. The learned author further argued that, they are permitted to use diplomacy, and appeals to international organizations to influence other states by the representation of facts and arguments and the making of representations, protest and declaration of policy and opinions[15].

It is submitted that, the first part of the learned author's explanation is within the meaning of force as provided in the UN Charter on non-intervention, however the last part of his discussion seems to be an

[13] Harris, D. Cases and Materials on International Law, Sweet and Maxwell, London, 7th edition (2010) p. 89
[14] Wright, Q. "Non-Military Intervention." In: Karl W. Deutsch, et. al.,(ed), The Relevance of International Law. Schenkman Publishing Company,
London (1968) p.5
[15] Ibid.

exception to the prohibition of non-intervention. This makes his discussion not clearer, it could have been better to explain the two subject separately i.e prohibition of interventions and exception thereto.

According to Professor Oppenheim, intervention is a forcible or dictatorial interference by a state in the affairs of another state, calculated to impose certain conducts or consequence on that other state[16]. This definition by the learned Professor, seems to be apt on the issue of non-intervention. The learned author makes a terse or pungent explanation on what constitute intervention. According to him, two elements of force and dictation with the aim of insisting on certain conditions or inflicting certain consequences on a state subject to that prohibited intervention. It is therefore submitted that, this definition is well articulated and straight forward.

The term intervention has been defined by Professor Vincent, as an attempt by one state to influence another state, for any purpose, by any means[17]. In the opinion of the researcher intervention in the strict sense is a violation of a state's sovereignty and generally relates to international law. It is therefore submitted that, the definition by the learned author is too

[16] Oppenheim, L. International Law. Longman (1952) Vol. 1 p. 430
[17] Vincent, R.J. Non-Intervention and International Order. University Press (1974)p.281

wide and not in accordance with the UN Charter which categorically provide for forceful intervention.

It is most respectively submitted that, the thread that cut across the arguments of all the writers is that all of them are unanimous in their belief that, principle of non-intervention as a fundamental norm of international law prohibits all forms of direct or indirect intervention in to internal or external affairs of a sovereign state.

Despite, the importance of state sovereignty as one of the basic pillars on which world order rests, yet, there is a growing belief that different forms of intervention are necessary in some cases to prevent and alleviate human suffering and human rights abuses. This is quiet a contradiction with reference to the UN charter. It is clear that Article 2(4)[18] is categorical on the prohibition of the threat or use of force. Article 51[19] expressly reserves the inherent right of an individual and collective self-defence of states. In addition, an exception to this principle would also be where UN authorizes such use of force as provided in Art. 42 of the UN Charter[20]. Beyond this, claims to other exceptions do exist under customary international law[21].

[18] UN Charter.
[19] Ibid.
[20] Ladan, M.T., Materials and cases on Public International Law. ABU Press Limited, Zaria (2007) P.84
[21] Ladan, M.T., Op. Cit P.84. See Also Haris, D., Cases and Materials on International Law. Sweet & Maxwell, University Press, London, 7th Edition (2010) P.721, and Shaw, M. N. International Law. Cambridge University Press, London, 5th edition (2007) p. 1039.

## **1.**6 **Justification**

The justification for embarking upon this research work is primarily founded on the fact that despite the existence of numerous international, regional and national legal regimes, interventions continue and particularly by the UN and first world countries such as US, UK, etc in to the activities of third world countries. Hence, the needs to provide practical guidance and strategies on how to control interventions. Further, the need to raise the level of states commitment to the respect, compliance and observance of the principles of non-intervention which is fast dwindling.

Finally, the need to determine the efficacy and adequacy of the existing legal frameworks with a view to finding solutions to the interventions issue which is threatening the principle of friendly relations and peaceful co-existence.

The research will help the international community to understand the importance of the principle of non-interventions. It is hoped that the study will add to the existing research literature on the principle and that the outcome of this research will be the basis for further researches.

The research also will be useful to students, law lecturers, practitioners, jurists, authors of international law, members of various non-governmental organizations, member states of the UN, judges of

international court of justice and anybody who is interested in reading the principle of non intervention.

## 1.7 Methodology

This begs the question: how will the materials for writing this thesis be collected, used and analyzed? The answer is that, the method adopted in writing this work is the doctrinal method of research.[22] In this context the researcher will largely consult both primary and secondary sources. For instance, in respect of primary sources, the research will focus on international and regional treaties as well as domestic legislations. Beside treaties like Charters, Conventions, Protocols other relevant international standards such as Declarations will be consulted. For the secondary sources references to be consulted include journals, text books, websites, reports of relevant institutions, magazines, newspapers, pamphlets, and news bulletins relevant to the aims and objectives of the research. Furthermore, as a person who is interested in international law, the writer will be listening and following discussions relating to non-intervention either in radios or television (current events).

[22] Aboki, Y., Introduction to Legal Research Methodology. Tamaza Publishing Company Limited, Wusasa, Zaria, 2nd Edition (2009) Pp. 2-3.

It is hoped that the information or facts gathered from experience over time will be used to supplement those gathered through research. This is called teleological research methods[23].

## 1.8 Organizational Layout

In this thesis there are five chapters. The first chapter deals with the general introduction of the thesis. This includes the introduction, aims and objectives of the study, the statement of the problem, the scope of the study, literature review, justification and methodology adopted.

The second chapter deals with the historical development of the theory and legal status of non-intervention. It has also examine the various sources of the law of Non-intervention and analyze the theory of sovereignty in relation to non –intervention.

The third chapter deals with the exceptions to the rule of non-intervention, these include both old and new factors. In this chapter there are arguments as to whether some of the bases or factors which warrant intervention today are really genuine reasons for intervention in fact.

The fourth chapter deals with modern concept of the doctrine of non-intervention and examines, in details, the various factors responsible for such changes.

[23] Ibid.

The fifth chapter deals with Summary, Conclusion and Recommendation.

# CHAPTER TWO

## 2.0 THE DEVELOPMENT OF THE PRINCIPLE OF NON-INTERVENTION

### 2.1 Introduction

After the Second World War, it was the desire of the international community not to do anything which would rupture the stability, peace and security of the world or globe. For this reason, during the preparation of the United Nations Charter at Damberton Oaks, England, it was decided that, in as much as the member nations could seek for specific settlement of international disputes, some limitations were desirable under which circumstances, intervention should not be entertained by the United Nations.[1] One of the circumstances is, when the subject matter of a complaint is essentially within the domestic jurisdiction of a state[2]. That is to say, if the issue, problem or complaint is absolutely termed local; in which case the attention of the United Nations to the problem, issue or complaint is not necessary. This problem was even perceived during the operation of the League of Nations, which preceded the United Nations.

In this chapter, the task is to define, trace the development and limitations which are placed on the principles of non-intervention. The idea

[1] See Preamble to the Statute: Charter of the UN Statute of the International Court of Justice, United Nations. New York (1945) p.3
[2] Ibid.

of sovereignty of state shall be discussed and how it is interwoven with the concept and principle of non-intervention.

Lastly, the recent trends of the concept and principle of non-intervention will be discussed.

### 2.1.1 Meaning of Non-Intervention

Most writers on international law do not bother to define what non-intervention means. Rather, they try to define intervention. Therefore, the meaning of intervention defined in a positive way, will be the meaning of non-intervention in a negative way.

According to international law, the word intervention means "interference with matters essentially, within the domestic jurisdiction of a state."[3] To Hingorani, intervention means a "dictatorial interference in the affairs of another sovereign state."[4] In another meaning, it is the use of force or threat of use of force for the purpose of getting support or otherwise of the country for which influence was exerted[5]. Non-Intervention may mean, restrain from exacting an act by use of force on another country, which has sovereign equality with others. Or, in another way it

[3] Nicaragua v. USA (1986) ICJ Report. Pp. 723-731
[4] Hingorani, R.C., Modern international Law. Oxford & IBH Publishing Co., New Delhi Bombay Calcutta, 3rd Edition (1985) P. 303.
[5] Nicaragua v. USA (Supra) p. 728

means restrain from act capable of denying or rupturing the idea of the principles of self-determination of a sovereign country[6].

According to Oppenhiem, intervention means, specifically "a dictatorial interference by a state in the affairs of another state for the purpose of maintaining or altering the actual conditions of things."[7] Stark defines Intervention as "act contrary to the will of the Victim State and must, by design or implication impair the political independence of that state."[8] It is submitted that, the principle of non-intervention is a fundamental principle of contemporary international law, which prohibits not only armed intervention but all direct and indirect intervention in the domestic affairs of a sovereign state.

### 2.1.2 Historical Development of the Principle of Non-Intervention

Many authors, including Cobden[9], Mill[10], Kant[11] and Mazinni[12] had espoused the theory of non-intervention. Cobden, a Manchester businessman and subsequently a professional politician, wrote in 1935 and advocated an absolute adherence to non-intervention by Britain. In his estimation, Britain, being a manufacturing nation depended upon trade,

[6] Ibid. p. 731
[7] Oppenhiem, L. International Law. Longman. (1952) Vol. 1. p. 34.
[8] Stark, J.G. Introduction to International Law. Sweet & Maxwell, London, 9th Ed. (1984) p. 99
[9] Vincent, R.J. Non-Intervention and International Order. University Press, (1974) p. 281
[10] Mills, J.S A Few Words on Non-Intervention. Reprinted from Fraser's Magazine, December, 1859 In: Mills, Dissertations and Discussions Political, Philosophical and Historical, London (1875) Vol. 111. Pp. 153-178
[11] Vincent, R.J. Non-Intervention and International Order. Op. Cit p. 281.
[12] Ibid.

needed peace as pre-requisite for meaningful trade. He did not ascribe to the view which perceived Britain as the carrier of schemes of universal benevolence, "as enforcer at the behest of the Almighty in every part of the globe"[13] or as the "gendarme whose office it was, gratuitously, to keep in order all the refractory nations of Europe"[14] He thus did not recognise humanitarian intervention as an exception to the doctrine of non-intervention.

John Stuart Mill, was troubled by the fact that while British policy was stated as non-intervention; her actions did not always conform to the principle of non-intervention[15]. The learned author, sought to provide justifications for the difference between British policies on the one hand and practice on the other hand. In this connection, he attempted to explain the doctrine of humanitarian intervention as a moral question[16]. In that respect, he distinguished between rules applicable to the relations between civilised nations and those, which relate to actions towards "barbarians". In distinguishing between "civilised nations" and "barbarian," Mill, of course, had in mind the colonisers and the colonised respectively. His aim was to justify the colonial policies of Britain, which should not be considered as

[13] Bright and Rogers, Speech to the House of Commons, June 5, 1855, Vol. 1, p. 51.
[14] Vincent, R.J. Non-Intervention and International Order. Op. Cit, p. 9.
[15] Mills, J.S A Few Words on Non-Intervention. Op. Cit p. 153-178.
[16] Ibid.

intervention, for “barbarian” had no right of a nation. Mill supported Counter-intervention to end foreign intervention by another. According to him, the doctrine of intervention by another country to be a legitimate principle of morality, must be accepted by all governments. The despots consent to be bound by it as well as free states. Unless they do, the profession of it by free countries comes, but to these miserable issues, that the wrong side may help the wrong but, the right must not help the right. Intervention to enforce non-intervention is always rightful, always moral, if not always prudent.

To Kant, the doctrine of non-intervention can have absolute application only when the international society became composed of only republican nations[17]. In his view, it was permissible for a republic to intervene to crush a despotic government and pave the way for the establishment of a republic. A part from that, Kant argued that if nation is split into two by internal strife verging on anarchy, the intervention from outside would be justified. He asserted, however, that the preservation of international peace must be based on freedom and “moral integrity” of each nation”[18].

[17] Vincent, R.J. Non-Intervention and International Order. Op. Cit., p. 57
[18] Ibid.

Mazzini denied to the doctrine of non-intervention moral contents which Cobden and Mill had sought to infuse it with[19]. According to him, after the congress of Vienna, the rule became an instrument for the protection of the terms of the settlements of 1815 to sustain the status quo. Mazzini thus denounced the policy of non-intervention as "an abject cowardly doctrine: - term transplanted in to international life, the definition of self-interest"[20].

It is however, noteworthy that for quite sometimes even before the advent of League of Nations and the UNO the principle of non-intervention had been recognised in domestic and non-domestic jurisdictions, for example under the Monroe Doctrine of USA (1823) which forbade the Principal European Powers of the Triple Alliance from intervening in affairs of Spain to restore her authority in Latin American Colonies that had become independent and recognised by USA. Full recognition was given to Non-intervention through the Drago Doctrine of 1902 and published at The Hague Peace Conference in 1907, which proposed that states not use armed intervention against other states to collect debts arising from government loan.

[19] Mazzini attributed to the doctrine of non-intervention two functions. First as a "useful and righteous protest against lust of conquest and appetite for wars which then characterized the activities of Europe. Secondly, it served to prevent conflict between governments. In this view, the doctrine of Non-intervention became, after the French Revolution a mere tool of the great powers for the protection of their own self-interest.

[20] Ibid, p. 61

In 1902 Russia, Afghanistan, Turkey, Iran and Mongolia signed a Treaty on Non-intervention. It is, therefore, difficult to discern a generally agreed body of doctrine on the question of intervention in traditional international law. In a rather forthright manner, Wolf writing in the 18th century and Bernard in the 19th century denied any legal justification for intervention[21]. Others, such as Wheaton agreed on this view but granted an exception based on the doctrine of necessity[22]. To Winfield, non-intervention was the rule and intervention was merely the exceptions[23]. The idea of the principle of non-intervention was conceived during the League of Nations, the organisation which was succeeded by the United Nations. Article 15(8) of the Covenant of the League of Nations provided as follows. *"* if the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of the party Council shall so report, and shall make no recommendation as to its settlement".

What this mean is that it prescribed the standard of international law for determining whether a matter was solely within the domestic jurisdiction of a state and expressly empowered the Council to make the

[21] Wolf, C. Gentium Metnodo Scientifica Pertratum (1746), ed. Trans, J.H Drake, Carnegie Classics of International Law, Oceana, (1964). Also, See Bernard, M. The Principle of Non-Intervention , Oxford (1960) J.H. and J. Parker, page 26 et seq, and pp. 282 et seq

[22] Wheaton, L. Elements of International Law. Sweet and Maxwell, London (1973) p. 72, Also See Vincent,. R.J. p. 283.

[23] Winfield, T. History of Intervention in International Law. 3 Byil,(1922-1923) p. 139

determination. Similarly, it was the standard of international law, which was evolved to determine whether a matter was essentially outside the domestic jurisdiction and hence required the intervention of the League of Nations. The Dumberton Oaks proposal contained a comparable provision to that of the League of Nations. It provided that the provision dealing with the pacific settlement of disputes "should not apply to a situations or disputes arising out of matters which by international law are solely within the domestic jurisdiction of the states concerned".

At the United Nations Conference in San Francisco, the sponsoring governments proposed an amendment which made non-intervention a governing principle for the whole organisation and member states. In the view of the sponsoring governments[24], the amendment was required because of the broadened scope of the organisation's functions, primarily, with respect to economic, social and cultural matters. It was intended in particular to require the organisation, in carrying out its economic and social objectives, to deal with government, instead of allowing the organisation to "penetrate directly in to the domestic life and social economy of the member states. It was not intended to weaken the power of the United Nations in the maintenance of peace and security. To make this

[24] Goodrich, et al. Charter of United Nations: Commentary and Documents, Steven and Sons Ltd. (1949) p. 111. Also, See Statement of Mr. Dullen of the US Delegation, UNCIO, Summary Report of the 17th Meeting of Committee 1/1 Junes 14. 1945. Document 1019. 1/1/42 p. 1-2.

clear, the new proposal contained a provision to the effect that the application of the principle of non-intervention of threats to the peace and acts of aggression and action with respect thereto, should not be prejudiced."[25]

This amendment was criticised. It was argued that it undermined the authority and influence of the United Nations. Secondly, it was argued that it weakened the role of the law in the new organisation. Thirdly, it was argued that it opened the way to arbitrary acts based on consideration of expedience and national interest[26].

On the other hand, it was believed that the new proposal was not fair enough, in that, while it adequately safeguard the position of the permanent members of the Security Council, who would be in the position to exercise the veto, it did not sufficiently, protect the smaller nations against pressure that might be brought to bear in connection with the wholly domestic matters. Therefore, the sponsoring governments[27], at the San Francisco meeting adopted the amendment proposed by Dr. Herbert Vere Evatt, the Australian representative which further restricted the authority of the organisation by saying that the organisation had the right to "make

[25] Goodrich, et al. Charter of United Nations: Commentary and Documents. Op. Cit., p. 111.
[26] Ibid. p. 111
[27] The Original Signatories of the Declaration of the United Nations Charter of January 1, 1942 are: USA, Great Britain, Northern Island, USSR, China, Australia, Belgium, Canada, Costa Rica, Cuba, Czechoslovakia, Netherland, New Zealand, Nicaragua, Panama, Poland, South Africa, and Yugoslavia.

recommendations or decide upon measures to be taken to maintain or restore peace and security". This was interpreted by Goodrich, Hambro and Simons to mean that the Security Council had the power to decide upon terms of settlement of a dispute, as well as take enforcement measures[28]. In fact, they further argued that the proposal as they stood might place a premium on the threat or use of force. Today, the principle of non-intervention is interwoven with the use of force[29]. However, it is the view of this writer that the meaning of non-intervention should be wider than use of force. After all, it is not realistic to limit intervention to use of force alone.

In short, the raison d'être for various amendments that were proposed was as follows:

> *The organisation we are developing is assuming, under the present Charter, functions wider in their scope than those previously assumed by the League of Nations or other international bodies and even wider than those which were contemplated at Dumbarton Oaks, especially in the economic, social and cultural fields. The tendency to provide the United Nations with a broad jurisdiction is, therefore, relevant and founded. The necessity on the other hand, to make sure that the United Nations under prevalent world conditions should not go beyond acceptable limits or exceed due limitation called for principle 8, [Article 2(7)] as an instrument to determine the scope of the attributes of the*

[28] Goodrich, et al. Charter of United Nations: Commentary and Documents. Op. Cit., p. 112
[29] Ibid.

> *organisation and to regulate its functioning in matters at issue.*[30.]

Commenting on this quotation, Goodrich, Hambro and Simons opined that:

> *The paragraph establishes a limitation on the authority of the United Nations and then proceeds to make an exceptions to the limitation. It limits the United Nations by denying it authority to intervene in matters essentially within the domestic jurisdiction of any state and expressly providing that members are not required to submit such matters to settlement under the Charter." It makes an exception to this limitation by providing that the principle does not prejudice the application of enforcement measures under Chapter VII.*[31]

## 2.2. **Sources of the Law of Non-Intervention**

### 2.2.1 **United Nations Charter**

The issue as to what is the precise source of the law of non-intervention before 1986 was not unanimously settled by international law practitioners, jurists and philosophers[32]. However, as between the United Nations and sovereign states, the United Nations Charter prohibits interventions in matters which are essentially within the domestic jurisdictions of any state. Thus, Art. 2(7) inter alia provides:"Nothing contained in the present charter shall authorise the UN to intervene in

[30] See UNCIO Supplement to Report of Rapporteur, Committee 1/1 to Commission 1, Dec. 1670, 1/1/34 (1), p. 1
[31] Goodrich, et al. Charter of United Nations: Commentary and Documents. Op. Cit., p. 113
[32] In Nicaragua case (Supra) p.14, the court made reference to Corfu Channel case where it was stated that "this principle of non-intervention is not as such spelt out in the UN Charter"

matters which are essentially within the domestic, jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter, but this principle shall not prejudice the application of enforcement measures under chapter VII"[33].

It was argued by Henkin and Ladan that this Article prohibits United Nations from intervening in state matters, which are essentially within the domestic jurisdiction of any state[34]. Therefore, no state is compelled to refer its dispute to the United Nations for settlement, if that dispute is essentially within its domestic jurisdiction[35]. The limitation in this Article is on the United Nations and not on the state. However, it is our strong submission that Art. 2(7) is a source of the law of non-intervention in as much as it limits intervention by the United Nations in the domestic affairs of state[36].

### 2.2.2. **United Nations General Assembly Resolution 2131 (1965)**

Resolution 2131, General Assembly of the United Nations regarding Declaration on inadmissibility of intervention in the Domestic Affairs of States and the protection of their independence and sovereignty, is another

[33] Art. 2(7) UNC, (Supra) p.2

[34] HenkinPugh ,etal. International Law: Cases and Materials. West Publishing Co. StPaul. Minnessota, 2nd ed., (1987) p.3 AlsoSee Ladan, M.T., Materials and Cases on Public International Law. ABU Press Limited, Zaria (2007) P.84

[35] Nicaragua v. USA (Supra), para. 202

[36] United Nations Security Council whose power it is to intervene, rarely exercises this power

source of the law of non-intervention. In this resolution, the General Assembly solemnly declared that no state has the right, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any states. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic, and cultural elements are condemned[37].

The resolution went further to say, no state may use or encourage the use of economic, political or any other type of measures to coerce another state in order to obtain from it, the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no state shall organise, assist, foment, finance, incite, or tolerate subversive, terrorist or armed activities directed toward the violent overthrow of the regime of another state, or interference in civil strife in another state[38]. This resolution has been accepted to be the source of the law of non-intervention[39].

The principle of non-intervention proclaimed in this resolution is now provided in art. 19 of the Charter of the Organisation of American States; art. 5 of the Charter of League of Arab States; art. 111 of the Charter of Organisation of African Unity; the Conference of Montevideo, Buenos

[37] Resolution No. 1 General Assembly, 20th session, December 21, 1965
[38] Resolutions No. 2, Ibid
[39] Nicaragua v. USA (Supra) para. 202

Aires; Chapultepec and Bogota' decisions of Afro-Asian Conference at Bandung; the First Conference of Heads of State and Government of Non-Aligned Countries at Belgrade; in the programme for peace and international co-operation adopted at the end of the Second conference of Heads of state and Government of Non-Aligned Countries at Cairo' and the Declaration of Subversion adopted in Accra by the Heads of State and Government of the African States.[40]

The United Nations General Assembly Resolution 2131 prohibits intervention by one state in the domestic affairs of other states. It also protects the independence and sovereignty of all states. This in fact guarantees the principle of non-intervention spelt out in the declaration.

### 2.2.3 United Nations General Assembly Resolution 2625 (1970)

Another source of the law of non-intervention is the General Assembly Declaration on principle of international law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, 1970. General Assembly Resolution 2625, October 24, 1970.

This resolution reaffirms the customary international law on non-intervention. In it, the General Assembly solemnly proclaims that every

[40] Henkin, Pugh, et al., International Law: Cases and Materials. Op. Cit., p. 690.

state has the duty to refrain in its 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 purpose of UN. Such a threat or use of force constitutes a violation of international law and the Charter of the UN and shall never be employed as a means of settling international issues.

### 2.2.4 **Case Law**

The International Court of Justice in the case of Nicaragua v. USA redefines the law of non-intervention and said: “The principle of non-intervention involves the right of every sovereign state to conduct its affairs without outside interference, though examples of trespass against this principle are not infrequent; the court considers that it is part and parcel of Customary International Law.”[41]

### 2.2.5 **Customary International Law**

In Corfu Channel Case, the I.C.J said, “Between independent states, respect for territorial sovereignty is an essentially foundations of international relations.”[42]

[41] Nicaragua v. USA (Supra) para. 11
[42] UK v. Albania (1949) ICJ Report. P.4

In the case of Nicaragua, the I.C.J reiterated that the United Nations Charter does not spell out the principle of non-intervention, that the principle is a principle of Customary International Law[43].

### 2.2.6 Opinio Juris

In the Nicaragua Case, the I.C.J stated "the existence in the opinio juris of the states of the principle of non-intervention is backed by the established and substantial practice. Moreover, it has been presented as a Corollary of the principle of the sovereign equality of states"[44]

## 2.3 The Interpretation of "Domestic Jurisdiction"

At the San Francisco meeting, it was decided that the power to interpret the meaning of domestic jurisdiction should be vested in the International Court of justice (I.C.J). This was seriously resisted. The proponents include USA, U.K, France etc argued that the standard of interpretation should be in accordance with international law[45]. For this reasons, the International Court of Justice, should be the right court for interpreting what domestic jurisdiction is. The opponents of this view include Australia, Belgium, Czechoslovakia, Cuba, Nicaragua, New Zealand, Costa Rica etc had argued that the interpretation of "domestic

[43] Nicaragua v. USA (Supra) para.11 Ibid.
[44] Ibid.
[45] Goodrich, et al. Charter of United Nations: Commentary and Documents. Op. Cit. p. 114-5

jurisdiction" should not be vested in the International Court of Justice. According to them, the interpretation of domestic jurisdiction should not be legalistic. Instead, it should be general, so that both the Security Council and the General Assembly should interpret the provisions. It was argued that the role of the International Court of Justice should be supervisory one. In practice this has been the case over the years[46].

### 2.3.2 Some Reasons for Intervention

There are several reasons why a country may like to intervene in the actions of another country. Some of them are the great inequalities of powers. For example, economic motives, such as the desire to acquire or preserve access to resources. Ideological motives such as the desire to promote social revolution or national liberation, or to oppose it. Security motives, such as concern to effect the global distribution of power. Perhaps, even humanitarian motives such as concern to uphold human rights against tyrannical regimes.[47]

These motives are against the principle of non-intervention. There is an overwhelming consensus behind the principle that all states are entitled to rights of independence or sovereignty. If a state has the right of sovereignty, that necessarily imposes the duty of non-intervention on

[46] Ibid.
[47] Henkin, Pugh, et al., International Law: Cases and Materials. Op. Cit., p. 692

others. That is to say, the principle of non-intervention safeguards the doctrine of sovereignty of states. Similarly, intervention destroys or raptures the doctrine of sovereignty of state. We shall now discuss the relationship between intervention and sovereignty, with the view to highlighting how intervention modifies, destroys, or is interwoven with the principle of non-intervention.

### 2.4.0 The Idea of Sovereignty of State

Already, we have defined what intervention means. But before discussing Intervention and sovereignty, it is necessary at this juncture to endeavour to define the word sovereignty. It is hoped that if this word is defined, it will facilitate the general concept of idea of intervention and how it relates to sovereignty.

### 2.4.1 The Concept of Sovereignty

Jurisprudentially, there are two different types of sovereignty[48]. First, there is national sovereignty. This means, the highest internal body whose decisions regarding, economic, social and political matters of a country are final. In fact, a sovereign of a nation, is a body or groups of persons or a person who does not owe any allegiance to an external authority. In a country like Nigeria, the sovereign is the people represented by the

[48] Ibid.

National Assembly which comprises of the upper house known as the Senate and the lower house known as the Representatives[49].

In the Military regime, it could be the body which has power to make laws, and policies. The concept of national sovereignty is therefore synonymous with the embodiment of totality of powers in that body, person or group of persons.

Secondly, the most relevant concept of sovereignty in the context of our discussion is the external sovereignty. The external sovereignty of a state consists of its independence of action, its freedom from external control, in its relations with other states or outside authorities[50]. "By sovereignty, we understand the whole body of rights and attributes which a state possesses in its territory, to the exclusion of all other states, also in its relations with other states."[51] It has been argued that the definition of external sovereignty like the one given above does not exist in the context of the contemporary international law. In other words, in view of the interconnectedness of the modern world, there is no authority which can claim absolute sovereignty of itself. Furthermore, Justice Alvarez of the International Court of Justice said: "Today, owing to special interdependence and to the predominance of the general interest, the

[49] Section 47 of the Constitution of the Federal Republic of Nigeria, 1999.
[50] Goodrich, et al. Charter of United Nations: Commentary and Documents. Op. Cit., p. 99
[51] Corfu Channel Case UK v. Albania (1949) I.C.J. Report, p. 43.

states are bound by many rules which have not been ordered by their will. The sovereignty of states has now become an institution, an international social function of a psychological character[52], which has to be exercised in accordance with the international law." The learned justice, further suggested that the new interpretation or meaning of sovereignty should conform with the modern idea of state[53].

An erudite scholar of international law, Prof. Brownlie described the doctrine of state sovereignty as a confused one. He said:

> *The notion that the validity of international law raises some Particular problem arises from the confusion which the doctrine of sovereignty has introduced into the international legal theory .....The truth is that, states are not persons, however convenient it may often be to personify them; they are merely institutions, that is to say, organisations which men establish among themselves for securing certain objects of which the most fundamental is system of order within which the activities of their common life can be carried on. They have no wills except the wills of the individual human beings who direct their affairs; and they exist not in a political vacuum but in continuous political relations with one another. Their subjection to law is as yet imperfect, though it is real as far as it goes; the problem of extending it is one of great practical difficulty, but it is not one of intrinsic impossibility. Here are important differences between international law and the law under which individuals live in a state, but those differences do not lie in metaphysics or in any mystical qualities of the entity called state sovereignty[54].*

[52] Nicaragua vs. USA (supra) para. 158
[53] Ibid, para. 159
[54] Brownlie, I., International Law and the Use of Force by States. 37 BYIL (1961) p. 301

In fact, this quotation has said it all about the debate whether there is a group of persons, individuals, or individual who can arrogate to themselves or to himself the designation of sovereignty in its real sense today. However, in the discussion that follows, it is assumed that a state can arrogate to itself the status of sovereignty as defined above.

### 2.4.2 Non-Intervention and the Doctrine of Sovereignty

From the foregoing, we have said that intervention into matters essentially within the domestic jurisdiction of a sovereign state is a violation of the sovereignty of that state. Arguments have been put forward by many academicians of international law[55] and state practice[56], philosophers[57], and diplomats[58] that the doctrine of sovereignty is what protects weak nations from intermittent interventions by strong nations[59]. The doctrine of sovereignty, it was asserted, is a safeguard against interference into the domestic jurisdiction of small and weak nations by strong and wealthy nations. The doctrine of non-intervention was fashioned out as a means of securing international peace and security. Non-intervention in principle is to protect the value of sovereignty and domestic jurisdiction of states[60].

[55] Vincent, R.J. Non-Intervention and International Order. Op. Cit, p. 281.
[56] Ibid.
[57] Ibid.
[58] Ibid.
[59] Ibid.
[60] Nicaragua, Cuba etc.

Sovereignty is the legal and political status of international society. It is a prerequisite and major criterion, which differentiates nationalism from internationalism. The doctrine of sovereignty provides limitation against intervention or interference of one nation against another. In this respect, Koretsky observed in the international Law Commission, in 1949 thus:

> *That sovereignty of states must so regulate relationship between states that the mastery of superiority of one state over another could not exist. To limit the power of one's own state was to open the gates to the intervention of other states. The international field must not be dominated by those who interfere in the internal affairs of others, by reactionaries who sought to organise other countries by force.*[61]

The world lawyers are, ardent champions of sovereignty. In this context, Prakash Singh, rightly points out that: "Sovereignty is the most treasured possession of the newly independent states. On one hand, it make them the masters of their houses, on the other hand, it provides them with a legal shield against foreign incursion or attempts of threat by strong states."[62]

[61] Vincent, R.J. Non-Intervention and International Order, Princeton University Press (1974) p. 281. Also see International Law Commission Report, 1949, Session 1, p. 72

[62] Prakash, S. Representatives of the Newly Independent States on the Binding Quality of International Law. In: Friedrick Snyder and Surakiats (eds); Third World Attitudes Toward International Law: An Introduction. Martinus Nijihoff, Dordrecht, Boston, (1987) p.28.

It is also natural that sovereignty is seen as a means of achieving demands for a fair share in the participation in international decision making process in different field of international relations. On the internal sphere, sovereignty as Okoye, correctly remarks: "it is a powerful instrument for shaping national identity, breaking the claims of subordination which are factors of backwardness and furthering social and economic progress."[63]

However, the danger in the third World, is that sovereignty in the internal sphere may well be used, and indeed has been used in many instances, as a wall which masks and justifies violations of human rights. For example, in the continent of Africa and other parts of the world sovereignty is used to shield countries who are perpetrating violation of human rights. For example, Rwanda, Angola, Uganda, Zimbabwe, Libya, and presently Syria, Mali, Algeria and Egypt.

### 2.4.3 The Concept of Sovereignty and Contemporary World

There are opinions against the usefulness of sovereignty. In fact, there is a growing tendency, generally in the Western World, which considers that the notion of sovereignty is obsolete and that it does not correspond to the development which has been taking place in the

[63] Okoye, F.C International Law and the New African States, Sweet and Maxwell, London, (1972) p.185

international society. In this context, as far back as 1925 Politis, wrote and condemned the notion of sovereignty as outdated. He then suggests the replacement of sovereignty by the notion of liberty.[64]

It must not be forgotten that any rejection of the role of sovereignty in international society would, in practice, be in the interest of the developed countries and their multinational corporations, since the latter are struggling for the abolition of borders and jurisdictions in order to have direct access to markets and national resources.

Bedjaoui[65], refutes suggestions of integration and interdependence by going back to history. According to the learned author, the logic of these old times are not over, the crux of the matter is that any call for integration and the abandonment of sovereignty will never be in the interest of the weak units of international society who will by abandoning their sovereignty, lose everything or control over their destinies and their social, cultural and political particularism, whereas the strong, the multinationals and their protectors or their governments will inevitably gain everything because of their strengths, might, and know-how. The relinquishing of sovereignty would give them a free hand to shape the economic face of the world and consequently gain the maximum of profits.

[64] Politis, N.S. Le Problem Des Limitation Dela Sourverainete, RCAD 1,( 1925)1, Pp.10 – 12
[65] Badjaoni, M. Pour Nouvel Order Economique International, UNSECO, Paris (1979) p. 83.

The contention that it is necessary to abolish sovereignty in order to assert the supremacy of the individual is not on the agenda. Some political scientists, such as Maclauren simply maintain that we need not write many words on sovereignty because;- "the world is interdependent, socially, economically and even juridically, and the sovereignty of a government consists in making decisions that are primarily adjustments to conditions and demands determined to by other."[66]

Among those who waged the hardest attack on sovereignty is Kenk, he writes-

> *Sovereignty holds no promise of peace. It affords no prospect of defence. It gives no assurance of justice. It gives no guarantee for freedom. It offers no hope of prosperity. It furnishes no prescription for welfare. It hardens the opposition to orderly and peaceful social changes. It disrupts the discipline without which scientific and technological innovations become the Frankenstein of our society. It is a mockery not fulfilment of the deepest aspirations of humanity[67].*

He also thought that the conscious rejection of the dogma of sovereignty is an essential step in "releasing our creative facilities that we can build together the prosperity, and welfare of a free commonwealth in

[66] Maclaurine J, The UN Power and Politics. George Allen and Uwin (1957) p. 427

[67] Jenkin, C.W. A New World of Law? A Study of Creative Imagination in International Law, Harlow and Longmans (1969) p. 134.

which peace with justice, freedom and welfare rest solidly upon the common law of mankind."[68] He holds a firm view that the world has outgrown sovereignty. He agrees with Max Huber that:"The concept of sovereignty which existed long before the Renaissance may have been necessary for transforming feudal medieval states into modern ones but for any ethic of a supranational community it is mortal poison."[69]

It is our strong submission that, sovereignty is not a mortal poison, it is healthy medicine. People need it to keep their national identity, for which they fought hard. Moreover, it makes them the masters of their destiny. It ensures that they have a full right to choose the forms of their political, economic and social organisation without any interference[70]. Hence, super powers cannot impose on or prohibit small states from choosing their ways of life as indeed the I.C.J has noted in Nicaragua case.

In fact, the court implicitly refuted any illusions that we are moving towards a "world government". Sovereignty is still the main pillar of international organisation. Our conclusion concerning the rejection of sovereignty by some Western scholars would be our agreement with Hector Gross Espiel, who rightly stated that:

[68] Ibid, p. 134
[69] Ibid. p. 133.
[70] Nicaragua v USA supra para. 202

> *The concept of sovereignty is necessary and fundamental part of international law and international life and policies today. To seek to eradicate the concept and confirm its incompatibility with international law, as certain doctrinaire schools have attempted, constitutes useless and anti-historical effort incompatible with the world as it is and the inescapable and undeniable political and mythical force for the idea of sovereignty*[71].

Furthermore, it is worth nothing that the argument against sovereignty comes from a section of Western doctrine. However, even within that section, two bases for rejecting sovereignty were advanced. The first school is the idealist and humanist, which regards sovereignty as a real obstacle against full realisation of human rights on a planetary level. To this school, all individuals in all countries are the same and they need to be treated alike, only the fiction of sovereignty separates them. The main criticism of such opinion is that, in practice, it is doubtful whether all people and individual aspire to live under the umbrella of one-world government and opposing values and ways of life.

The second school seems to base its rejection of sovereignty on the basis of the advances made in technology, communications, and the expansion of business. To the trend, in our modern world sovereignty has

[71] Gros Espel, Sovereignty, Independence in Jiri Tanam 2nd ed. (1986) p. 27.

become a real brake in the face of the demands of trade, business and international communication.

It is the view of this writer that, this kind of argument is in the interest of big business since a territorially organised world would be a very serious obstacle for the expansion of mighty Multinational Corporations which possess the necessary know-how in the sphere of industrial and technological production.

Bearing in mind that developing countries especially have a very long experience with the exploitation of their natural resources and their wealth, they seem to consider that in order to escape another wave of sophisticated domination in the economic and other fields, it is best to cling to sovereignty and demean its full achievements.

In other words, third world countries use sovereignty as a political weapon in their struggle against inequality. It is also the opinion of this writer that, the third world countries are justified in defending sovereignty to protect themselves from economic and cultural hegemony of the west. They nonetheless accept that sovereignty should serve the protection of human dignity inside their territories. Sovereignty must not be used to justify violation of human rights either in times of peace or emergencies, like internal disturbances or civil wars.

## 2.5 Conclusion

Throughout this chapter, we have analyzed the principle of the law of non-intervention. Pertinent to this are the sources of the law of non-intervention; these include customary international law, Article 2(7) UN Charter, the General Assembly Declaration on the principle of Inadmissibility of intervention on Matters Essentially within the Domestic Jurisdiction of Sovereign States, Resolution 2131 of 21st December, 1965; together with elucidation and discussions contained in the Nicaragua case. Other sources include the 1970 General Assembly Declaration on the Principle of International Law Concerning Friendly Relations and Cooperation among States, (in accordance with the Charter of the UN, 1970, GA 2625 October, 1970). All these forces combined together are meant to protect and preserve the territorial integrity, political independence and sovereign equality of states. Particularly noteworthy, is the promotion of friendly relations among states and assurance of peace and security of the international community. To this end, armed intervention, aggression, subversion and all forms of indirect interventions are contrary to the principle of non-intervention and consequently, constitute violation of the Charter of the UN.

# CHAPTER THREE

## 3.0 THE MODERN CONCEPT OF THE PRINCIPLE OF NON-INTERVENTION

### 3.1 Introduction

After the Second World War, the international community was pre-occupied with the thought of how to prevent future occurrence of World war. Secondly, it was pre-occupied with how it could promote and guarantee world peace and security. It proclaimed the Second World War as a disaster, the reoccurrence of which could not be tolerated or condoned[1]. The international community wanted some ways to bring together a unifying institution, which could harness human and material resources to tackle the problems of insecurity in the world. To this end, the idea of evolving the United Nations Organisation was conceived with the view of succeeding the League of Nations with all its rights, obligations, duties, privileges and immunities[2].

For this reason, sponsoring governments first met at the Dambarton Oaks, in England culminating into subsequent meetings in San Francisco, United States of America, the result of which led to the draft of the UN

[1] See the Preamble to the United Nation's Charter New York, 1945, p. 3.
[2] Goodrich, et al. Charter of the United Nations: Commentary and Documents. Stevens and Sons Ltd, London (1949) p. 4. Also See Henkin Pugh, et al, International Law: Cases and Materials. West Publishing Co. St Paul, Minnessota, 2nd ed. (1987) p. 668.

Charter[3]. During the draft of the United Nations Charter, the idea of the principle of non-intervention which also featured prominently in the Leagues of Nations was discussed[4].

Both at the Dambarton Oaks and the San Francisco meetings, an Article was enacted which limited the then emerging United Nations from interfering into matters essentially within the domestic jurisdictions of states[5].

As already said above, Article 2(7) of the United Nations does not prohibit intervention of states into the domestic affairs of other states. Also, the Article does not compel states to refer matters which are essentially within their domestic jurisdiction for pacific settlement. As we have already observed, the principle of non-intervention came about as a result of the Declaration on the Inadmissibility of non-intervention in the Domestic Affairs of states and the Protection of their Independence and Sovereignty. (Resolution 2131 XXX) which was adopted by the United Nations General Assembly on 21st December, 1965[6], and Declaration on Principle of International Law concerning Friendly Relations and Co-operation which was adopted by acclamation at the General Assembly's 25th session on

[3] Henkin Pugh, et al. International Law: Cases and Materials. West Publishing co. St Paul, Minnessota, 2nd ed.,(1987) p.3
[4] Ibid. Pp. 110-111
[5] Goodrich et al, Charter of the United Nations: Documentary and Comments. Op. Cit. P. 115.
[6] Ibid. p. 689

24th October, 1970[7]. Since then, relations between states have changed remarkably.

Thus, recently states practices have widened the concept of non-intervention from intervention by use of force or threat of use of force as contemplated by art. 2(4) of the Charter to include intervention without use of force or threat of use of force. For example political pressure, economic pressure e.t.c., with the establishment of these modern concepts of intervention, it is impossible for developing countries to disregard comment, censorship and policy statements from developed countries. In other words though the United Nations Charter contemplates intervention by the United Nations, but since its enactment, other forms of interventions have grown up, the activities of which, at times, constitute interventions into the domestic jurisdiction of some other states.

These are what we think constitute the modern concept of the law of non-intervention: the new perspectives. In the subsequent discussions of this chapter, we would endeavour to analyse and discuss how these activities at times, constitute intervention into the domestic affairs of small states. These are in addition to interventions by use of force or threat of use of force by powerful states into the affairs of small states. It is only after

[7] Harris D. Cases and Materials on International Law. Sweet and Maxwell, London, 7th Ed., (2010) p.723

we have understood these modern concepts of the law of non-intervention that this writer can meaningfully recommend for the review of the law of non-intervention.

## 3.2 The Modern Concept of Intervention

Over the years, because of complexities arising from social, economic and political interests of states, coupled with the ever-increasing number of economic institutions, the law of non-intervention has changed features as a result of changed circumstances. New forms of subtle interventions have been devised by the bigger and wealthier nations against the poor and smaller nations. Therefore, under this subheading, we shall discuss these modern concepts of intervention; in other words, we will discuss the changing concept of the law of non-intervention. For purpose of clarity, we shall discuss each concept under a separate and conspicuous sub-heading.

### 3.2.1 Political Pressure

Some of the modern forms of intervention take the form of political pressure. In this regard the intervening state does not need to be present in the state in which it wants political pressure to bear or on the state which it wants to intervene. For example, there may be political pressure by US against Nigeria to ratify a treaty. Or, there may be political pressures by UK

against Iran requiring Iran to do something or else UK will sever diplomatic relations with Iran. In all of these instances, there is no use of "force" or threat of the use of force as contemplated by Article 2(4) of the UN Charter. In this regard, Goodrich, Simons, and Hambro stated thus:

> *It seems reasonable to conclude that while various forms of political coercion may be treated as threats to the peace, contrary to certain of the declared purposes and principle of the organisation, or as violation agreements entered into or recognized principle of international law, they are not to be regarded as coming necessarily under prohibition of Article 2(4), which is to be understood as dearest against the use of armed Force*[8]*.*

It is submitted here that if US puts political pressure on Nigeria to ratify a treaty and Nigeria accordingly dances to the tune of US, this will amount to illegal intervention on the independence and political integrity of Nigeria, hence the violation of Article 2(4) and 2(7) of the United Nations Charter.

The principle of non-intervention and the limits on a state's jurisdiction can be seen as related. Thus, when the US sought to impose obligations on foreign companies extraterritorially in support of its own foreign policy objectives, this may be seen as improper intervention in the affairs of the states whose companies are affected, hence violation of art. 2(4) and 2(7)

[8] Goodrich, et. al. Charter of the United Nations: Commentary and Document. Op. Cit., p.49

of the UN Charter though force or threat of use of force is absent[9]. Also in 2001, Washington had blocked important economic and humanitarian aid to Haiti, in order to pressurise elected president of Haiti, Jean Bertrand Aristide to step down[10].

Similarly, in February 2014 President Obama of US and other countries have been pressurizing Uganda government not to sign a law that prohibits same-sex marriage in the country. On February 19, 2014 President Obama threatened to sever diplomatic relations and stop giving financial aid to Uganda if it sign this law, while Norway, Denmark and other European countries have already stopped giving aids to Uganda[11].

Further, on 31 August, 2013[12], President Obama of US said that the US will maintain its position against Syria with efforts under way to diplomatically place its chemical weapons under international control. He further argued that this would allow U.S to achieve its goal-deterring the Syrian regime from using chemical weapons, degrading their ability to use them, and making it clear to the world that we won't tolerate their use. Similarly, last year (2013) US government put pressure on Algeria[13] by

[9] Majiar, et al, The Principle of Non-Intervention. 22 Leiden Journal of International Law (2009) pp. 345-381.
[10] Ibid.
[11] Anonymous (2014) www.algazeera.com/indepth/sportlight/2014/02/2011222121213770475.html
[12] Anonymous (2013) Internet Politicalticker Blog. Obama Maintain Military Pressure on Syria. Retrieved 10 February, 2014 from www.cnn.com
[13] Hillary O. (2013) Internetglobalpolicy.org: Humanitarian Intervention. Retrieved 10 February, 2014. www.humanitarian-intervention.html

insisting that it most participate in an African-backed intervention in Mali that was authorised by the UN Security Council Resolution 2071 of 2013 which it tacitly participate to the military action in Mali, though it has expressed its suspicion regarding foreign intervention in the region, fearing that it would push fleeing Al-Qaeda members and Tuareg refugees across its southern border. This is also an illegal intervention in form of non-use of force or threat of use of force. Hence a violation of art. 2(4) of the Charter.

Among other activities which, depending on the circumstances, may contravene the principle of non-intervention are interference in the political activities (such as through financial or other support for particular political parties, comment on upcoming elections or on the candidate; seeking to overthrow the government so-called regime change)[14]. For example, the 1998 US Iraq Liberation Act which called on the US to support efforts to remove the regime headed by Saddam Hussein from power in Iraq and to promote the emergence of a democratic government to replace that regime[15]. Similarly, President Obama of U.S, President François Hollande of France and other European countries have been calling on Ukraine's elected president Victor Yanukovych to step down from his position and are supporting the opposition to overthrow him, because Yanukovych

[14] Majiar, et al, The Principle of Non-Intervention. Op. Cit. pp. 360.
[15] Ibid., p. 371.

government has quit relationship with US and other European countries in favour of Russia. The US and its Western European allies have finally successful in overthrowing Yanukovych[16]. In all the above instances, the activities of US, UK, Turkey and Qatar amount to illegal intervention on the independence and political integrity of Cameroon, Algeria, Iraq and Syria respectively, though force or threat of the use of force is absent. This is a new and subtle kind of intervention which if narrowly constructed may not be within the purview of art. 2(4) of the UN Charter. However, we submit that this is an act of illegal intervention.

### 3.2.2 Economic Pressure

It has been argued that economic pressure is not use of force or threat of the use of force. It cannot therefore be considered as violating Article 2(4) of the UN Charter. For example, trade boycott or the blocking of a bank account. According to Goodrich, Hambro and Simons unless in some very obvious cases, they are not to be regarded as coming necessarily under the prohibition of Article 2(4) which contemplated the use of armed force[17].

In the 1970 Declaration on the Principles of the Use of Force, the Western states (bloc) argued that only armed force was prohibited. The

[16] Anonymous (2014) www.algazeera.com. Op. Cit p. 110.
[17] Goodrich, et al., Charter of the United Nations: Commentary and Document. Stevens and Sons Ltd (1949) p. 49. Also, See Harris D. Cases and Materials on International Law. Sweet and Maxwell, London, 7th Ed., (2010) p. 727.

Soviet bloc, Latin America and most developing countries claimed that all forms of pressure, including those of political and economic character which have the effect of threatening the territorial integrity or political independence of any state were prohibited[18]. However, in the Nicaragua case[19], the I.C.J found that the US economic sanctions complained of by Nicaragua were not in breach of the principle of non-intervention[20]. With utmost respect to the learned justices, all kind of intervention into territorial integrity of a sovereign state is prohibited[21].

For instance, since Iran's nuclear programme became public in 2002, the International Atomic Energy Agency (IAEA) has been unable to confirm Tehran's assertions that its nuclear activities are exclusively for peaceful purposes and that it has not sought to develop nuclear weapons. The UN Security Council has adopted six resolutions since 2006 requiring Iran to stop enriching uranium. The US and European Union (EU) have imposed additional sanctions on Iranian Oil Exports and banks since 2012[22].

The UN sanctions include a ban on the supply of heavy weaponry and nuclear-related technology to Iran, a block on arms exports; and an

[18] Ibid.
[19] Nicaragua vs. USA (1986) ICJ Report. P.1
[20] Ibid. p.724
[21] UNGA Resolution 2625 of 1970.
[22] Anonymous (2014). An overview of Current Sanctions against Iran. www.bbc.co.uk/newsworld-middle-east 15983302, Thursday 20 January, 2014.

asset freeze on key individuals and companies. The US on the other hand has imposed successive rounds of sanctions, in November 2001, Washington targeted Iran's oil revenue by threatening to cut off the US financial system foreign financial institutions that conducted oil transaction with Iran's central bank. This prompted several countries to reduce their imports to Iranian oil, including China, Japan, India, South Korea, Turkey, South Africa and Singapore. The UK and Canada ordered financial institutions to stop doing business with their Iranian counterpart. In July 2013, the US imposed further sanctions aimed at Iran's oil and petrochemical sectors, as well as its shipping trade it blacklisted what it described as a global network of front companies controlled by Iran's top leaders, accusing them of hiding assets and generating billions of dollars of revenue[23].

As a result of the EU embargo and the US sanctions targeting other measure importers, Iran's[24] oil exports had fallen to 700,000 barrels per day (bpd) by May 2013, compared with an average 2.2 million bpd in 2011,. In January 2013, Iran's oil; minister acknowledged for the first time that the fall in exports was costing the country between $4b and $8b (£2.5 b - £5b)

[23] Ibid.
[24] Ibid.

each month. Iran is believed to have suffered loss of about $26b (£ 16b) in oil revenue in 2012 from the total of $95b (£59b) in 2011.

The loss of oil revenue and isolation from the international banking system, has caused Iran's currency, to lose two-thirds of its value against the US dollar and cause inflation to rise to more than 40% with prices of basic foodstuffs and fuel soaring. In April 2013, the International Monetary Fund (IMF) forecast that Iran's Gross Domestic Product (GDP) would shrink by 1.3% in 2013 after contracting 1.9% the previous year[25]. This amounts to illegal intervention on the independence and economic integrity of Iran, which if construed may not be within the purview of art. 2(4) of the UN Charter.

Similarly, On January 20, 2011[26] NATO imposed sanctions against Libya on certain trade and transactions, including bans on certain oil and gas equipment as well as prohibitions on the transfer of military goods, aviation parts and services, and financial activities[27]. Likewise, on May 30, 2012[28], US levied sanction on a key Syrian bank as it seeks to ratchet up economic pressure on president Basher Assad's regime[29]. In the above

[25] Ibid.
[26] Okon, E. The Crisis in Libya. ASIL (2012) Vol. 3, p. 10.
[27] Ibid.
[28] Dickson, M. The United Nations Resolution on Syria: Exploration of Motivation from Russia and China. AJCL (2013) vol. 10., p. 15.
[29] Ibid.

instances, it is the view of this writer that both NATO and U.S actions against Libya and Syria respectively amount to illegal intervention on the economic independence of Libya and Syria and therefore violation of the principle of non-intervention even though force or threat of use of force is absent.

### 3.2.3 Democratic Revolution

The cloaks under which some big countries intervene in the political activities of small nations is democracy. Democracy has been defined by Prof. Vincent as the government of the people, by the people and for the people[30]. It is a system of government based on popular will of the people. It is said, democracy is the government in which the majority views always reign. It is always in contrast with oligarchy, autocracy, military dictatorship and monarchy. The greatest proponent of democracy is the United States. Over the years that country has intervened in the domestic activities of many countries under the cloak of democracy. In other words, the country has paraded itself as the greatest practitioner of the concept, idea and ideology of the principle of democracy.

During the cold war which ended 1989, the US Government under the pretence of being the greatest enforcer and practitioner of the ideals of

[30] Vincent, R.J. Non-Intervention and International Order. Op. Cit., p. 287

democracy, launched armed attacks on countries which were not practicing democracy or democratic system of government. In the case of Grenada[31], in 1979, Maurice Bishop became Prime Minister of a new revolutionary government of Grenada, a small Caribbean State, and formerly a UK Colony. The new government, which unlike its elected predecessor had communist leanings, established links with Cuba and the USSR. In October 1983, disagreement within Bishop's party led to his government being ousted by a more radical left wing government. On October 19, Bishop and some of his supporters were executed.

A curfew was ordered, with forces empowered to shoot on sight. October 23, 1979, the US sent troops from several Caribbean States, who quickly took control of the Island after fighting with Grenada forces. The US troops were evacuated in December, 1983 and a centre right government was democratically elected in 1984. The US justified its intervention on three grounds (1) The protection of US nationals, (2) A request to intervene from the organization of Eastern Caribbean State (OECS), in which Grenada was a member, (3) A request to intervene from Governor – General of Grenada. These justifications have been doubted[32]. Although there were US nationals in Grenada, all accounts suggest that they were

[31] Gilmore, The Grenada Intervention (1984) 31 AILJ, p. 893
[32] Ibid.

not at risks. The competence of the OECS to request a non-member state to intervene in the absence of external aggression and by the procedure followed was questionable and the Governor-General was not constitutionally competent to request assistance[33]. A draft Security Council resolution condemning the US intervention as illegal was Vetoed by the US. A General Assembly resolution deploring the US action was adopted by 108 votes to 9, with 27 abstentions.

Another illustrative case under which big states (particularly the US) do intervene in the domestic activities of smaller nations is the case of Panama[34]. On December 20, 1989, the US invaded Panama, sending troops to supplement others already based there, to overthrow the government of General Noriega. After some resistance by Panama armed forces, the invasion was successful, with General Noriega surrendering to the US authority, after initially taking refuge in the Papal Nuncio's residence. He was then flown to the US to face drugs charges.

The invasion took place shortly after General Noriega, who had annulled the results of an election, which he was believed to have lost, had been proclaimed Panamanian Head of State with wide ranging powers. The US President Bush ordered US intervention to protect US nationals,

[33] Ibid.
[34] Nande, Farer and D' Amato, Intervention in Panama (1990) 84 AJIL, p. 503

because a US army was killed. He said the intervention was to restore democracy, to protect Panama Canal, and to prosecute Noriega for drug related offences[35]. The UN General Assembly deplored the intervention as a flagrant violation of international law[36]. The vote was 75 to 20, with 40 abstentions. A draft resolution by the United Nations Security Council, which condemned the intervention, was vetoed by the US.

Similarly, in February 2004, opposition forces staged an armed rebellion against the elected president of Haiti, Jean Bertrand Aristide. The US called for the restoration of democracy and worked with the Organization of American States (OAS) and intervened to restore democracy[37]. Likewise in 2003, after the failure to find weapons of mass destruction in Iraq, the rational for the war shifted from regime change to the grandiose scheme of implementing democracy[38].

### 3.2.4 Humanitarian Assistance

In a very subtle way, sometimes, intervention takes place or occurs in the form of humanitarian assistance. Nowadays, states hide under humanitarian assistance to violate the rule of non-intervention. In other

[35] Ibid., p. 516
[36] G.A Res. 44/240, UN Press Release GA/7/1977 p.91
[37] Alan, K. (2013) Internet globalpolicy.military-expansion-and-intervention. Retrieved 10 February, 2014. www.haiti-intervention.html
[38] Hillari, C. Iraq War: Six Lesson we still need to learn. American Journal of International Law (2013), vol. 3 p. 282.

words, a state may interfere or intervene indirectly in the affairs of another state by providing services which can be seen clearly to have been humanitarian assistance in appearance while, in fact, it is a violation of the rule of non-intervention. For an assistance to genuinely qualify as humanitarian, it must be free from bias or partiality. The services must be rendered transparently and must demonstrate high probity and selflessness[39].

Therefore, where a humanitarian service is biased and clearly demonstrates partiality, or clearly have an ulterior motive behind it, it will not qualify as humanitarian. For example, some acts of humanitarian intervention may include distribution of blankets, food, relief materials such as building materials, drugs, resettlement, provision of medical care and support in the form of financial assistance. In the Nicaragua case[40], allegation was made against the USA for hiding under the cloth of humanitarian assistance to aid the contras. The court found that the financial support given by the United States up to the end of September, 1984 to the Military and Paramilitary activities of the contras in Nicaragua, constituted a clear breach of the principle of non-intervention. The court said:

[39] Lillich, Humanitarian Intervention and the UN 6AJIL (1973) p. 416
[40] Nicaragua v. USA (Supra) para. 243

> *An essential feature of truly humanitarian aid is that it is given without discrimination of any kind. In the view of the court, if the provision of humanitarian assistance is to escape condemnation of an intervention in the affairs of Nicaragua, not only must it be limited to the purposes allowed in the practice of Red Cross, namely to prevent and alleviate human suffering, and to protect life and health and to ensure respect for the human being, it must also, and above all, be given without discrimination to all in need in Nicaragua, not merely to the contras and their dependents but to all and sundry*[41].

Another illustration on which some states intervene in another state in the name of humanitarian assistance is the current Syrian uprising[42]. A number of countries including the United States, the United Kingdom, Turkey and Qatar have been providing support to the opposition in various forms, ranging from humanitarian and to military supplies such as foods, relief materials, weapons, armor, etc[43] to continue with their opposition against Assad regime.

The writer reiterates that this is a subtle and modern concept to the law of non-intervention. Here, though there is no armed attack, but military and other assistance of the USA and its allied forces to the contras clearly demonstrates an illegal violation of the principles of non-intervention. The

[41] Ibid.
[42] Matthew C.M. (2013). Internet.ForeignPolicy. Syrian Uprising. Retrieved – February 9, 2014, from htt://www.humanitarain-intervention.html
[43] Ibid.

court remarked that in some exceptional cases, humanitarian assistance is recognized and legitimate. It said: "There can be no doubt that the provision of strictly humanitarian aid to persons, or forces in another country, whatever their political affiliations or objectives, cannot be regarded as unlawful intervention, or as in any other way contrary to international law.[44]"

### 3.2.5 Ideological or Moral Values

According to Prof. Oppenheim, intervention is a forcible or dictatorial interference by a state in the affairs of another state, calculated to impose certain conducts or consequence on that other state[45]. In the 19th century it was darkly associated with the armed intervention on humanitarian ground, by powerful European states in the affairs of their weaker brethren[46]. It also includes other, more subtle forms of influence or control[47]. For example, intervention on political, moral or ideological values. Thus, in the Dominican Republic case[48], on April 24, 1965 a revolution occurred against the Cabral Government. It was led by young Military officers and members of the Dominican Revolutionary Party. Fighting broke out and the situation deteriorated to the point where the military junta which had replaced the

[44] Harris D. Cases and Materials on International Law. op. cit., p. 777
[45] Oppenheim, L. International Law. Longman (1952) Vol.1 page 430
[46] Corfu Channel Case (Merits) UK vs Albama (I.C.J) Reports (1949) p. 4
[47] Damrosch, (1989) 83, AJIL, p.1
[48] Friendmann, M. Dominican Republic Crisis (1964). 59 AJIL 857. (1965) Pp. 866 – 8.

Cabral Government in opposition to the rebels informed the US Embassy that it was not able to guarantee the safety of the US nationals. In response to the request from the junta, 400 US marines were landed in the Republic on April 28, 1965. President Johnson stated he did this in order to protect United States and other foreign nationals[49]. The figure was later increased to over 20,000 troops. On May 2, 1965 President Johnson gave a reason for the US involvement. He said:

> *What began as a popular democratic revolution very shortly, was taken over by a band of communist conspirators. The American nation cannot permit the establishment of another communist government in the Western Hemisphere. This was the unanimous view of all the American nations when in January 1962, they declared that the principles of communism are incompatible with the principles of the inter-American system. This is and this will be common action and common purposes of the democratic force of the hemisphere[50].*

Similarly, in the Czechoslovakia case, 1968[51], with the arrival of Mr. Dubeck and other new leaders in power by lawful means, the still borne communist government of Czechoslovakia introduced certain reforms resulting, inter alia, in increased freedom of speech, that were significantly at variance with Czechoslovakia's previous policies. In August 1968, troops

[49] Bull, US Department of States (1965) Vol.15, Pp. 745 – 746
[50] Ibid.
[51] Thomas, T. The American and Soviet Battle for States. The Current Digest of the Soviet Press. No.46, Pp.3-4, December 4, 1968.

from the USSR and other East European Communist States entered Czechoslovakia[52]. With the assistance of Soviet advisers, the policies and composition of the Czech Government thereafter gradually changed, with the movement toward liberalization being reversed. The USSR first claimed that the Czech Government had requested the intervention, but this was strenuously denied by that Government. Later, the intervention was explained by Mr. Brezhnev in a speech in Poland, as follows:

> *It is well known, comrades, that there are common natural laws of socialist construction, deviation from which could lead from socialism as such. And when external and internal forces hostile to socialism try to turn the development of a given socialist country in the direction of restoration of the capitalist system, this no longer merely a problem for the country's people, but a common problem, the concern of all socialist countries[53].*

This is a very subtle kind of intervention of the nature of ideology of a political economy. In the past, the cold war was fought on the basis of political system of the economy i.e. socialism versus capitalism[54]. While the US practices capitalist political economic system, the USSR practiced the socialist political economic system. With these ideologies, each of the countries tried to influence the political economic system of the other

[52] Ibid.
[53] Ibid.
[54] Ibid.

countries. For example, Poland practices socialism while Canada practices Capitalism. Any success achieved by any of these giant countries on smaller countries by indoctrinating its ideology, was tantamount to invasion of independent and territorial integrity of these smaller states[55].

Under this circumstance, force need not be used. What is important is indoctrination with the ideology of the intervening country. Attempts to reverse Ideological belief without use of force or threat of the use of force, it is submitted, amount to an illegal intervention which may not be covered by Article 2(4) UN Charter. In Nicaragua case, the court did consider and reject the idea that there was a right of intervention to support the political or moral values of a rebellion.

### 3.2.6 Supply of Funds

Ordinarily, the term intervention has been defined by Vincent as an attempt by one state to influence another state, for any purpose, by any means[56]. Under the rules of international law only force or threat of use of force is recognised as an intervention which is illegal. Jurists however are in consensus that intervention in the strict sense is a violation of state sovereignty and generally relates to international law[57]. The question is whether supply of fund simpliciter to a rebel group can amount to

[55] Ibid.
[56] Vincent, R.J. Non-Intervention and International. Op. Cit., p.1
[57] Ibid.

intervention, therefore contrary to the law of non-intervention? In the Nicaragua case, the United States argued that supplying of funds to the contras (a rebellion group against the government of Nicaragua) did not constitute an intervention because it was not an armed attack. Supposing that state A assist state B with money to buy military hardware for state B to continue with its resistance against state C, will it not be considered to be an armed attack? It is submitted here that funding a rebellion against a legitimate government is tantamount to intervention which violates international law. In the Nicaragua case, the I.C.J held that the US had infringed the rule prohibiting the threat or use of force by "arming and training of the contras" but that it had not done so by "the mere supply of funds."[58] We submit the distinction between "arming and training" and funding is not necessary or desirable. In addition, it is submitted that funding a rebellion group amounts to breach of the responsibility of friendly relationship which exists between sovereign states. It is therefore contrary to Article 2(4) of the UN Charter.

For example, in 2011, the US, UK and Arab League gave financial and military assistance to the oppositions in Libya to continue with their

[58] Harris, D. Cases and Materials on International Law. Op. Cit., p. 728

resistance against President Muammar Gaddafi[59]. In all the above instances, amount to illegal intervention, hence violation of art. 2(4).

### 3.2.7 Provision of Statistics and Logistics

Like assistance by a state to rebels seeking to overthrow the government of another state, for example, the assistance given to Syrian rebels to overthrow Assad government[60] or assistance to government attempting to suppress rebellions as in the current Egypt uprising where the military government that overthrew elected president Muhammed Morsi is getting support from the US and Israel, have been common features of international relations since the World War II[61], in the Nicaragua case[62], legality of assistance in the form of provision of statistical data and logistics was considered. Judge Robert Jennings said:

> *It may readily be agreed that the mere provision of arms may, nevertheless, be a very important demand in what might be sought to amount to armed attack, where it is coupled with other kinds of involvement. Accordingly it seems to me to say that the provision of arms coupled with logistical or other support is not armed attack is going much too far[63].*

[59] Sean, D.M. (2013) Internet Foreign Policy. Op. Cit.
[60] Ibid.
[61] Ibid. p. 729
[62] Ibid.
[63] Ibid.

The above view of Lord Jennings is absolutely supported by this writer. It is submitted that, if an intervening state aids a rebellion group with aerial map showing rivers, deserts, mountains, forest, areas of a country with dense or sparse population and roads or foot paths to facilitate their operations, this will amount to armed attack, violating Article 2(4) and general custom of international law.

### 3.2.8 Economic Sanctions

In the Nicaragua case, the I.C.J found that the United States' economic sanctions complained of by Nicaragua were not in breach of the principle of non-intervention. The court's view is that economic sanctions are in the form of what it described as "non-use-of-force. That is to say, an intervention in the internal affairs of state which is certainly wrongful or bad conduct, but is of lesser gravity than an armed attack[64]. This is the crux of the modern concept of the law of non-intervention. Strict interpretation of the Nicaragua case therefore, means that if an act is not accompanied by the use of force, threat of the use of force or armed attack it will not qualify as an intervention.

It is most respectively submitted that, this is not the correct interpretation or definition of the principle of use of force. The most

[64] Ibid. p. 724

important thing is that does the act complained of have the effect of depriving the intervened state its independence and territorial integrity? If it has, it is the firm and strong submission of this writer that is a violation of the principle of non-intervention under international law. Thus, the demarcation between the "use of force" and "non-use-of-force" is not necessary and desirable[65]. For example, pressure to ratify a treaty, or severance of diplomatic relations. In these circumstances, the activities complained of are not in the form of armed attack or direct use of force in the literal sense. It is submitted that economic sanctions such as those imposed on Libya (2011), Iraq (1990), Argentina by United Kingdom (1982), Southern Rhodesia (1965) and Iran (2012) Syria (2013), Russia by USA (2014) etc, though they took the form of "non-use-of-force" but were interventions contrary to the principle of non-intervention under customary international law. It is the independence of a state to choose whom to trade with or not. The realization of this independence is what ensures the sovereign equality of states. Lack of it, means inequality in the community of nations[66]. Economic activities of a country is the life wire of that country. Sanctions mean non participation in the international economic competitiveness by a state. In many cases, it may amount to interference

[65] This is in line with the previous submission that political and economic pressures amount to armed Attacks.
[66] Harris, D. Cases and Materials on International Law. Op. Cit., p. 724.

with the domestic and international affairs of a state. Though is devoid of armed attack, it is the belief of the researcher that due to changing circumstances, and depending on the facts of each case, it may not be out of place to say, economic sanctions are interventions which are inconsistent with the principle of non-intervention under customary international law.

### 3.2.9 Intervention to Assist Modernisation

It is only to illustrate the variety as well as the absurdity of the many criteria suggested to justify intervention that we may mention a recent proposal that outside intervention may be legitimate where it offers a reasonable possibility of contributing to the modernisation of the society in which it takes place[67].

This statement clearly depicts what we mean by modern concept of the law of non-intervention. During the Damberton Oaks and San Francisco meetings, it was hardly conceived by the members of the sponsoring governments that one day, the law they set to regulate intervention would expand to the extent of bringing in exceptions including one under consideration. One fault which one identifies with this exception immediately is what actually is the meaning of modernisation? For

[67] Henkin and Pugh, et. al., International Law: Cases and Materials. Op. Cit., p. 698

example, in Africa, most importantly, in Africa South of Sahara, does it mean leaving the African culture in favour of European culture that is alien to it or does it mean that the Africans abandon their family system? Does it include abandoning their modes of dressing, eating habits and respect for elders? Or does it mean they should abandon their traditional system of government absolutely without any relics of it, in favour of the Western Parliamentary and presidential system of government? There are many questions which one can go on asking if one wants to know with certainty what this exception really means. Or, does it mean they should abandon their agrarian method of farming and adopt mechanized one? Or does it mean they should abandon their local trade in palm oil, locust bean, locally woven clothes etc? And if they do not do any of these, will it be a good and justifiable ground for any of the developed, powerful and wealthy countries to intervene in order to compel less developed countries in so doing? In our opinion, if this exception is accepted it is feared that the most hard hit continent will be Africa, particularly, Africa South of Sahara.

During the cold war which ragged for a long time between the USA and USSR, it was argued on the part of the USA that socialism was retrogressive and therefore, countries should not adopt it as a system of

economy[68]. Socialism was seen by the USA as an old form of political system of economy which needed to be modernized. Capitalism was thought to be the modern system of political economy which should be adopted by progressive countries and any country that resisted this idea was considered to be a socialist country and hence termed leftist or non-progressive.

Recently, democracy has been linked to modernization. Consequently, if a country practices oligarchy, monarchical or autocratic system of government, it will be obviously blacklisted as a primitive, archaic or non-progressive government or country[69]. For example, most of the Arab countries of the Middle East who cling tenaciously to a different system of government are usually seen as traditionalist and therefore opposed to modernization. The disintegration of socialism is seen as a success in favour of countries with capitalist (rightist) system of government. It is because of the uncertainty of this exception it was said: “Even if one were to accept “modernization” as a general acceptable value of world order a proposition made doubtful by man’s recent pre-occupation with

[68] Ibid.
[69] Ibid.

environment and his discovery or the devastating effects of much of his "modernization" the ambiguity of the criterion is only too obvious"[70].

It is our submission that if this exception is allowed it will defeat the purpose for which law of non-intervention was founded. For several reasons, modernization too is a variable exception. It depends on the content and circumstance from which it is viewed. It is flexible, frivolous and indeterminate.

### 3.3 Conclusion

Finally, it is observed that, the law of non-intervention is assuming a different proportion than it was conceived in Article 2(7) of the UN, the two Declarations of 1965 and 1970 together with the general custom of international law. Intervention by use of force or threat of force as it was contemplated is not the case anymore. Nowadays, many interventions are perpetrated without use of force; intervention may be "indirect" through political, economic and diplomatic forms and are the majority.

[70] Henkin and Pugh, et. al., International Law: Cases and Materials. Op. Cit., p. 698

# CHAPTER FOUR

## 4.0 EXCEPTIONS TO THE RULE OF NON-INTERVENTION

### 4.1 Introduction

This chapter examines the exceptions to the rule of non-intervention in international law. The reason for carrying out this investigation is that, the post-cold war period of development appears to be superimposing on the law of United Nations its own order, the most characteristic feature being intervention by use of force, either for humanitarian assistance or purposes, whether such intervention is undertaken on the independent decision of particular states or on the authority of competent organs of the international community, such as the United Nations Security Council or other bodies/institutions such as International Monetary Fund (IMF), World Bank, etc.

The alleged right to intervention in humanitarian causes is at once related to but broader than the alleged right of humanitarian intervention. But whatever else, it is not new. The right has the imprimatur (an official authoritative approval) of the classical writers. Grotius, in his discourse 'On the cause of undertaking war on behalf of others'[1], considers that (if some tyrant) should inflict upon his subjects such treatment as no one is

[1] Grotius, H. The Customary International Law and the Doctrine of Humanitarian Intervention. 4 CWILJ (1974) p.203

warranted inflicting, the exercise of the right vested in human society is not precluded[2].

Gentili was categorical that "if subjects are treated cruelly, and unjustly, the principle of defending them is approved"[3]. He further elaborates this statement, that if another sovereign "remote from any nation harasses its own. The duty which I owe to the human race is prior and superior to that which I owe that sovereign"[4]. More significantly, Gentili defends the right to give "aid to the subjects of another even when they are unjustly provided that the purpose of the aid or intervention was to save them from immediate cruelty and unmerciful punishment; for it is the par of humanity to do good even to those who have sinned"[5].

On the other hand, some writers rejected this basis for intervention, according to Hall a 19th century positivist "No intervention is legal, except for the purpose of self-preservation, unless the whole body of civilized states have concurred in authorising it."[6] Wolff in an earlier century, in 1749, was even more categorical:- "if ruler of a state should burden his subjects too heavily or treat them too harshly, the ruler of another state

[2] Ibid.
[3] Gentili, A. Humanitarian Intervention. In: Moore, J.N. (ed.) Law and Civil War in the Modern World, Sweet and Maxwell, London (1974) p. 75
[4] Ibid.
[5] Ibid, p. 76
[6] Hall, W.E. International Law. Longman (1972) Pp. 342-4

may not resist that by force. For no ruler of a state has a right to interfere in the government of another, nor is this a matter subject to his judgement."[7]

In a sense, too, both the League of Nations' Covenant and the UN Charter laid the foundation. From this perspective, it would seem that since the end of the cold war the doctrine of unilateral or collective humanitarian intervention has come to be asserted more strongly and this coheres with the pattern of thought that militates against cardinal principles of contemporary international law as sovereignty and equality of states as well as non-intervention principle aimed at guaranteeing international peace and security.

This new doctrine of intervention rather affirms the moral interdependence of people, it recognises the existence of values such as protection of human rights, which, if not higher, are at least, co-equal to the UN Charter assumption of peace and state autonomy. This is also the view of more contemporary writers such as Tenson in providing a moral defence of humanitarian intervention. He asserts that because the ultimate justification of states is the protection and enforcement of human rights and therefore any state that engages in substantial violation of human rights

[7] Wolf, C. Jus Gentium Methodo Scientifica Pertrantanium. Secs. (1949) Pp. 255-7

betrays the very purpose for which it exists and so forfeits not only its domestic legitimacy, but its international legitimacy as well[8].

The problems and controversies in question are ones, which reflect the tension between two competing principles;- respect for human rights and respect for state sovereignty[9]. On the horizon of this very discussion, there lies a number of recent episodes of intervention in humanitarian causes involving either individual states or the UN and this warrants appropriate analysis and description. For the present however it is of critical importance to examine the limit within which the intervention of one state in the affairs of another is lawful under international law. The question itself is bound up with the progress made by the trend in favour and the concurrent acceptance in international law of certain categories of exceptions[10].

## 4.2 Prohibition of Intervention

Though Article 2 (4) of the UN Charter is categorical in its prohibition of the threat or use of force, that rule does not extend to the prohibition of intervention by one state in the internal affairs of another state. For that matter, nowhere else in the Charter is the principle of non-intervention

[8] Tenson, F.R., Humanitarian Intervention: An inquiry into Law and Morality, (1988), p. 15
[9] Lazhari. The Role of Sovereignty in the Contemporary World Order, ASICL Sweet and Maxwell, London; Proce, 5 (1993), Pp. 212-229
[10] Ladan, M.T., Materials and Cases on Public International Law. ABU Press Limited, Zaria (2007) p.84

explicitly laid down as a rule governing the relations of states[11]. The basic norm of the illegality of intervention by the individual state or groups of states appears now established by certain UN resolutions, most importantly by the Declaration on the inadmissibility of intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty Resolution 2131(XX) which was adopted by the UN General Assembly on 21st December, 1965 and the Declaration on Principle of International Law Concerning Friendly Relations and Co-Operation which was adopted by the UN General Assembly' on 24th October, 1970[12].

It is also of critical importance in any determination of the precise legal status of non-intervention to assess the impact of the pronouncement made by the international Court of Justice in the Nicaragua case. There the Court stated that: "The principle of non-intervention forbids all states to intervene directly or indirectly in the internal affairs of other states"[13]. Earlier on, the Court found that the principle has been reflected in those resolutions, among others, and these testify to the existence of a "customary principle which has universal application"[14].

[11] Ibid.
[12] Ibid
[13] Nicaragua V. U.S.A. (Supra) p. 108
[14] Ibid.

Evidently, the Court's opinion on the creation of customary law through the attitude of states toward General Assembly resolutions gives rise to controversy. A comment on the position of the principle which appears acceptable to other writers is offered by Professor D'Amato. He states;- "First, a customary rule arises out of state practice; it is not necessary to be found in UN Resolutions and other majoritarian political documents. Second, opinio juris is a psychological element associated with the formation of a customary rule as a characterization of state practice....."[15]

### 4.3 Anticipatory Self-Defence

If one presupposes that Article 51 of the UN Charter expressly preserves the inherent right of individual and collective self-defence, the problem that arises is one of examination of the content of that right under customary law.

On the basis of the famous Caroline case[16], the customary right of self-defence presupposes three main conditions. First there must be a delict by another state, the delict must be of a kind, which actually infringes or threatens to infringe the essential right of a state. Secondly, there must be a failure or inability on the part of the other state to prevent the delict or

[15] D' Amato. The Legality of Use of Force by States. 81 AJIL (1987) p.102
[16] 15. (1993) ICJ Report p.195

infringement. Thirdly, action taken in self-defence must be strictly confined to the object of stopping or preventing the delict or infringement and be reasonably proportionate to what is required for achieving the object[17].

In the Caroline case itself, British forces attacked and destroyed, in an American Port, an American vessel that had been used to supply groups of American nationals conducting raids into Canadian territory. The case is interesting because there was no armed attack on Canada. British forces intervened against only a threatened attack- an assertion of a right of preventive or anticipatory self-defence or pre-emptive self-defence.

Since 1945, there have been instances of states asserting this right of anticipatory self-defence[18]. The most current one is the present Israel-Palestine combat in Gaza, Israel justify its hostilities against Hamas in Gaza as self defence. It is submitted by this writer that Israel justification cannot be upheld because action is not proportionate to the object of stopping the infringement, Israel commit massive human rights violation in Gaza, it kills more than 2000 Palestinians while Hamas kills only 63 Israelis. On Monday August 4, 2014 International Human Rights Watch released a report accusing Israel for committing war crime in Gaza against civilian population mostly women and children. The military hostility initiated

[17] Ibid.
[18] Schatcher, O. The Right of States to Use Armed Force and the Rule of Law. 82 Michigan Law Review (1984) p. 1620.

by Israel and the United Kingdom against Egypt over the Suez Canal in 1956 was justified by reference to self-defence[19]. In 1956 and 1967, Israel similarly invoked the right of self-defence as justification of her initiation of hostilities against Egypt[20]. Similarly, US mounted missile attack against Iraq in 1993 in response to failed assassination attempt against ex-president Bush[21]. In 1998 the US went further in its attack on terrorist training camp in Afghanistan and on allied chemical weapons in Sudan in response to terrorist attacks on US embassies in Africa[22]. It justified its attack on ground of anticipatory self defence. Although these initiatives were criticised by Iraq and some other states as illegal, they were not formally condemned by the UN[23]. Support for these cases is exemplified by Bowett statement that: "No state can be expected to await an initial attack, in the present state of armaments, may well destroy the state's capacity for further resistance and so jeopardise its very existence"[24]

Henkin[25] argues against a right of anticipatory self-defence that "the exception for self-defence was recognised only in emergency, but limited to actual armed attack, which is clear, unambiguous, subject to proof, and not

[19] See UK, Hansard, H.L., Vol.199, Cols 1348-1359 Nov. 1, 1956.
[20] See Feinbery, Studies in International Law with Special Reference to Arab-Israeli Conflict (1979)
[21] Harris, D. Cases and Materials on International Law. Sweet and Maxwell, London, 7th edition (2010) p. 819.
[22] Ibid.
[23] Ibid.
[24] Bowett, D.W. Self-Defence in International Law. 66 AJIL (1972) Pp. 118-9
[25] Harris D. Cases and Materials on International Law. Op. Cit. P. 755.

easily open to misinterpretation or fabrication... it is precisely in the age of the major deterrent that nations should not be encouraged to strike first under protext of prevention of pre-emption."

However, the attacks on the World Trade Centre and the Pentagon on 11 September, 2001 brought a revolutionary challenge to the doctrine of self-defence and a reassessment of the law in this area[26]. On 9/11/2001, 19 Al-Qaida activists boarded and hijacked four passengers' jets owned by US airline companies on scheduled flights within the US. They flew two of the jets into the twin towers of the World Trade Centre in New York and one into the Pentagon in Washington; the fourth crashed in a field in Pennsylvania. Nearly 3,000 persons, nationals of 70 or so states, were killed[27].

In response to the attacks of 11 September, 2001, the US and UK began Operation Enduring Freedom on 7 October 2001, with the aim of disrupting the use of Afghanistan as a terrorist base[28]. They relied on self-defence as a basis for their use of force against Afghanistan. This claim received massive support and the action was almost universally accepted as self-defence. Only Iran and Iraq expressly challenged the legality of the operation. In resolution 1368 of 12/9/2001, the Security Council had

[26] Ibid, p. 772
[27] Ibid.
[28] Ibid.

expressly recognised the right of self-defence. Subsequently, Resolution 1373 of 14/11/2001 also included express reference to individual and collective self-defence. This was the first time that the Security Council had recognised the right to use force in self-defence against terrorists action[29]. It is the view of this writer that there is no legality of the US and its allied intervention in Afghanistan in 2001 prominent among the reasons is the art. 2(4) which expressly prohibit use of force. Secondly, massive violation of human rights and thirdly, even though there was actual attack on US, there was no proof linking Bin Laden to the attack which is an important pre-requisite before attacking Afghanistan.

However, in other cases, the UN has not shown any inclination towards accepting the claimed justification of self-defence other than in response, to an armed attack[30]. Instances include 1985 Israel action against headquarters of the PLO in Tunis and its bombing of Iraq nuclear reactor of 1981. In both instances, the UNSC unanimously condemned their action as violation of art. 2(4) and not accepted as lawful self-defence because it has not been regarded as sufficiently "imminent" for the purposes of any right of anticipatory self-defence[31].

[29] Ibid
[30] Ibid
[31] Ibid.

## 4.4 Intervention through Authorization of the UN Security Council

The United Nation Security Council by Articles 24 of the Charter is the body shouldered with the primary responsibility for the maintenance of international peace and security, and its decisions are binding upon all member states[32]. Therefore, where intervention is needed, by the collective effort of members of the United Nations, this can only be possible, with authorization of the Security Council. This can be allowed in matters, breaches of the peace, or acts of aggression, under Chapter VII of the Charter. But before the council can adopt measures relating to the enforcement of world peace it first determines the existence for any threat to the peace, breach of the peace or act of aggression[33].

The provision of the Charter, is however, categorical, in its determination. Article 39 is to the effect that: "That Security Council shall determine the existence of any threat to the peace, breach of peace, or act of aggression and shall make recommendations or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security."

[32] Shaw M.N International Law. Cambridge University Press, India, 6th Edition ( 2010) p.1123
[33] Ibid

Article 40 goes further to qualify article 39, thus:

> *In order to prevent an aggravation, of the situation, the security council may, before making the recommendations or deciding upon the measures provided for in article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.*

Article 41 provides thus:

> *The Security Council may decide to provide measures not involving the use of armed force which is to be employed to give effect to its decisions, and it may call upon the member of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and rail, sea, air, postal, telegraphic, radio, and other means of telecommunications and the severance of diplomatic relations.*

Article 42 is the only article of the Charter which in clear terms gives the Security Council the green light to authorize the direct use of force against any of its members that threatens international peace and security. But this is permitted only after all measures taken to resolve the matter including the use of blockades[34]fail.

[34] Ibid.

The article reads as follows:

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

However, once the Security Council has resolved that a particular dispute or situation involves a threat to the peace or act of aggression, the way is open to take further measures. The action adopted by the council, once it has decided that there exist with regard to a situation threats to peace, breach of the peace or act of aggression, may fall into either of the two categories[35]. It may amount to the application of measures not involving the use of force within the purview of article 41; such as the disruption of economic relations or the severance of diplomatic relations, or may call for the use of such force as may be necessary to maintain or restore international peace and security, under article 42.

There are however, some instances, under which the Security Council has exercised the power to authorize, the use of force against some states. These included against Iraq when it invaded neighbouring

[35] Ibid.

Kuwait in 1990[36]. Resolution, 661 imposed sanctions on Iraq from exporting its commodities to any other country or any other form of relation. Resolution 678 gave Iraq up to 15th January 1991; to comply with resolution 660, which among other things, include withdrawing its forces from Kuwait failing which member states were asked to use force to eject her.

Similar actions were ordered by the Security Council, at its 3063 meeting on 31st March, 1992 against Libya[37] for its failure to surrender two men; Lamen Khalifa Fhimah and Abdel Basset Ali al-Megrahi. The pair were accused of conspiring to place a bomb concealed in a radio cassette recorder in a suitcase on board an Air Malta flight that connected to Pan Am 103 in Frankfurt. The bomb exploded over Lockerbie on 21 December, 1989, killing all 259 people on board and 11 on the ground. Under this resolution, all dealing with the Libya government and flying of its aircraft into any state were disallowed. The resolution provided that, from 15th April 1992, all member states should deny permission of Libyan aircraft to take off from land in or overfly their territory if it is taken off from Libyan territory, excluding humanitarian need; prohibit the supply of aircraft components or the provision of serving of aircraft or aircraft components;

[36] Security Council Resolution 661 to 667 (1990)
[37] This is via resolution 748 (1992)

prohibit the provision of weapons, ammunition or other military equipment to Libya and technical advice or training[38].

The Security Council Resolution against Libya provided in paragraph (4) that all states shall:

> a. *Deny permission to any aircraft to take off from land in or over their territory if it is destine to land in or has taken off from the territory of Libya, unless the particular flight has been approved on ground of significant humanitarian need by the committee established by paragraph 9 below;*
> b. *Prohibit, by their nationals or from their territory, the supply of any aircraft or aircraft components to Libya, the provision of engineering and maintenance servicing of Libyan aircraft or aircraft components, the certification of air-worthiness for Libyan aircraft, the payment of new claims against existing insurance contracts and the provision of new direct insurance for Libyan aircraft;*

Para. (5) provided further that all states shall[39]:

> a. *Prohibit any provision to Libya by their nationals or from their territory of arms and related materials of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts for the aforementioned, as well as the provision of any type of equipment, supplies and grant of licensing arrangements, for the manufacture or maintenance of the aforementioned;*

[38] www.un.org/news/press.
[39] UNSC Resolution 748 (1992).

b. *Prohibit any provision to Libya by their nationals or from their territory of technical advice, assistance or training related to the provision, manufacture, maintenance, or use of the items in (a) above.*

However, one controversial resolution, the clarity of which was yet to be cleared is resolution 1441, under which guise the United States and Britain hid to attack Iraq. Although in clear terms the UN Security Council had passed the resolution only to compel Iraq to allow Hans Blix's led weapons inspectors' entrance into Baghdad, the duo of U.S and Britain argued that a second resolution was not necessary to legalize any military intervention[40]. It was under this resolution that the duo attacked Baghdad and dethroned its leader Sadam Hussein. Resolution 1441[41] provides inter alia:

1. that Iraq's possession of Weapons of Mass Destruction (WMD) constitutes a threat to international peace and security;

2. that Iraq has failed in clear violation of its legal obligations to disarm; and

[40] Drumble M.A. Self Defence and the Use of Force: Breaking the Rules or Birth? Journal of International Law Studies (2003), Vol. 4, P.416

[41] See 20 December 2002. S/RES/1441 (2002).

3. that in accordance, Iraq is in material breach of the conditions for the ceasefire laid down by the council in SCR 687 at the end of the hostilities in 1991, thus reviving the authorization in SCR 678...

It is important to stress that SCR 1441 did not revive the 678 authorization immediately on its adoption. Since there was no ‘automaticity’. The resolution afforded Iraq final opportunity to comply and it provided for any failure by Iraq to be ‘considered’ by the council (under para. 12 of the resolution). That paragraph does not, however, mean that no further action can be taken without a new resolution of the council. Had that been the intention, it would have provided that the council would decide what needed to be done to restore international peace and security, not that it would consider the matter. It is simply unacceptable that a serious and important as a massive military attack upon a state should be launched on the basis of a legal argument with dubious inferences drawn from the gaps in Resolution 1441 and the muffled echoes of earlier resolutions, unsupported by any contemporary authorization to use force. No domestic court or authority in the US or UK would tolerate governmental action based upon such flimsy arguments.

## 4.5. Claimed to other Exceptions

We have seen that only two exceptions are expressly allowed under the UN Charter: - force in self-defence when an armed attack occurs and action authorised by the Security Council. Beyond that, claims to other exceptions to Article 2(4) exist. Example include: humanitarian intervention, intervention against terrorism, intervention for the protection of lives and properties of nationals, etc. At the bottom, such suggestions for exceptions to Article 2(4) imply that contrary to the assumptions of the framers of the Charter, these are universally recognised values higher than peace and the autonomy of state. In general, the claims of peace and of state autonomy have prevailed[42.]

As regards these other exceptions, it is also noteworthy that though the international community has largely refrained from formally accepting them, they are a recurring theme in the law governing the use of force and of intervention and as such merit closer attention.

[42] Ladan, M.T., Cases and Materials on Public International Law. Op. Cit., p.84

### 4.5.1 Intervention for the Protection of the Lives and Property of its Nationals[43]

The right of state to use force to protect the lives and property of its nationals continued to be recognised throughout the period before the adoption of the UN Charter. Its rationale was stated by the United State Government at the Sixth international Conference of American states held in Havana in 1928.

> *What are we to do when government breaks down and American citizens are in danger of their lives....? I am speaking of the occasions where government itself is unable to function for a time because of difficulties which confront it and which it is impossible for it to surmount. Now it is a principle of international law that in such a case a government is fully justified in taking actions for the purpose of protecting the lives and property of its nationals. I could say that is not intervention....., of course the United States cannot forego its right to protect its citizens.*[44]

In the period of the UN Charter, the existence of this right has continuously been asserted by a number of states including the United Kingdom, United States, France and Belgium. There is even the tendency for this alleged right to be extended to afford protection also for those linked

[43] Akehurst, M. The Use of Force to Protect Nationals Abroad. 5 International Relations (1977) p.3; See Also, D'Angelo, Resort to Force to Protect Nationals. 21VJIL (1981) p. 485; and Ronziti, Rescuing Nationals Abroad Through Military Coercion and Intervention on Ground of Humanity. 84AJIL (1985) p. 391

[44] See Report of the Delegates of the USA to the Sixth International Conference of American States, Washington, 1928, Pp. 14-15, See Also, Brownlie, I. International Law and the Use of Force by States. 37 BYIL (1961) p. 293

to a state either by colour or race, that is, the so-called 'kith and kin doctrine'. Examples are the OAU in the context of the southern Rhodesian question and Turkish intervention in Cyprus on behalf of Turkish- Cypriots. That of course is not to suggest that controversy and disagreement does not surround the legality of that right. According to Brownlie: "a government faced with deliberate massacre of a considerable number of nationals in a foreign state would have cogent reasons of humanity for acting, and would also be under very great political pressure"[45].

At this point, it becomes necessary to call a number of occasions on which this right has been asserted in the post – 1945 period:-

a. The British intervention in Iran (Persia), 1957[46]
b. The Franco-British Intervention in Egypt, 1956 to ensure free flow of International Merchant Ships through the Suez Canada and save the lives of British and French nationals[47].
c. The Belgium intervention in the Congo, 1960 to prevent the secession of Katanga province by Mr. Tsombe and to protect the lives of Belgian and other European nationals[48].

[45] Brownlie, I. International Law and the Use of Force by States. 37 BYIL (1961) p. 301
[46] Harris, D. Cases and Materials on International Law. Op. Cit. p. 1125
[47] Bowett, D.W. Self-Defence in International Law, Op. Cit., Pp. 87-105.
[48] Harris, D. Cases and Materials on International Law. Op. Cit. p. 1128

d. The USA Intervention in Dominican Republic, 1965[49].

e. The Israeli intervention in Uganda, 1976 to rescue Israeli hostage held at Entebbe airport, Kamala[50].

f. The US Intervention in Iran, in 1980 to free Americans held as hostages[51].

g. The US Intervention in Grenada, 1983 to foil an attempted coup and free the Governor General held by rebels[52].

h. The US Intervention in Panama, 1989 to capture that country's president (Noriega) who was accused of aiding and abetting drugs trade to the US[53].

i. NATO intervention in Libya, 2011[54].

j. Intervention in Central African Republic (2014)[55].

In the case of the Franco-British intervention in Egypt, the United Kingdom Government, in several statements justified its action, inter alia, on the ground that it was necessary to protect the lives of its nationals. It

[49] Ibid p. 1128
[50] Akehurst, D. The Use of Force to Protect Nationals Abroad, Op. Cit., p. 1224
[51] USA v. Iran (1980) I.C.J. Report. Para. 21
[52] Harris, D. Cases and Materials on International Law. Op. Cit. p. 745
[53] Nanda, V. The Validity of the USA Intervention in Panama under International Law. 84 AJIL (1990) p. 494,
[54] Alan K. A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign. Quarterly Journal: International Security (2013) Vol. 38, Issue 1, pp. 105-136.
[55] Abba M.K. bbc.hausa.com 10th February, 2014.

did so by arguing that self-defence comprehends the protection of nationals[56].

Some comment is required of this case. In the first place, the justification for British intervention was made in terms of self-defence under customary international law and not on the basis of a right of exemption from Article 2(4) of the charter of the United Nations. Some of the academic writers such as Bowett[57] and Wadlock[58] supported this kind of intervention. In the main, they argued that reference may be made to the pre-1945 period for establishing the scope of self-defence. This position is of course arguable in the light of the restrictions placed upon the use of force by the charter and now the non-intervention principle as a rule of customary international law. Pertinently, Brownlie has remarked:-"it can hardly be possible to select particular parts of the old doctrine of necessity, self preservation, or intervention and attach them to a category of self-defence...."[59]

The incident which is most often cited in support of this form of intervention concerns the Israeli action at Entebbe in 1976 Uganda, to

[56] See Statement by Lord Chancellor on Nov.1, 1956, Parl Deb.,H/L CXCIX, Cols. 1353 et seq.
[57] Bowett, D.W. Self-Defence in International Law, Op. Cit., Pp. 87-105.
[58] Wadlock, S. The Regulation of the Use of force by Individual States in International Law, 81 Hague Recuil (1952, 11) Pp. 466-7
[59] Bownlie, I. International law and the Use of Force by States, Op. Cit., Pp. 255

rescue her nationals[60]. In this case an Air France airliner bound for Paris from Tel Aviv was hijacked over Greece after leaving Athens airport on 27 June, 1976. When seized by the hijackers the airliner was carrying about one hundred Israeli and other Passengers of different nationalities. At Entebbe where the airliner had been diverted the hijackers released the non Israeli passengers but continued to hold the Israeli passengers as hostages for the release of about 50 Palestinians imprisoned in various countries. Negotiations led by the Uganda authorities with the hijackers achieved little. In the tense period, which then ensued, Israel, on 6 July 1976, launched a military operation to rescue the hostages at Entebbe. The hijackers were killed, as were some Uganda and Israeli soldiers. Extensive damage was also caused to Uganda aircrafts and the airport.

A notable aspect of this incident is the allusion made to the right to protect citizens as existing under customary law. In this connection, on July, 1976, the United State delegate, Scranton, stated in the course of the debate in the Security Council on the incident, that:-

> *Israel's action in rescuing the hostages necessarily involved a temporary breach of the territorial integrity of Uganda. Normally, such breach would be impossible under the Charter of the UN. However, there is a well established right to use limited force for the protection of one's own nationals for any*

[60] Akehurst, D. The Use of Force to Protect Nationals Abroad, Op. Cit., p. 1224

> *imminent threat of injury or death in a situation where the state in whose territory they are located is either unwilling or unable to protect them. The right, flowing from the right of self-defence is limited to such use of force as necessary and appropriate to protect threatened nationals from injury*[61]*.*

It is noteworthy that the Israeli justification was self-defence, which echoes United Kingdom's justification for its action in the Suez Canal Zone on 31th October, 1956[62].

The above views respecting this form of intervention are very revealing if not highly controversial. This is so even where there appears to exist such clarity on the facts as would otherwise support intervention. Thus, it should evoke no surprise that in the instant case the Security Council failed to adopt a resolution either expressing support for, or condemning the Israeli actions[63] In the case of the United States Embassy at Tehran on 4th November, 1979 Iranian militants seized over 50 USA nationals as hostages, most of them diplomats and consular staff at the Embassy[64], the militants' action appeared to be in protest at the admission of the deposed Shah of Iran into the United States for medical treatment.

[61] Harris, D. Cases and Materials on International Law. Op. Cit. p. 1125
[62] Ibid.
[63] See a draft resolution sponsored by the UK and the USA (Doc. S/12138) which limited to a condemning of hijacking in general and did not comment on the conduct of the Paris did not receive the necessary votes for adoption, Another draft resolution (Doc. S/12138) proposed by Benin, Libya and Tanzania condemning Israel was not put to the vote.
[64] USA v. Iran (1979) ICJ Reports p. 3.

The information available did not suggest that the militants acted on behalf of the Iranian State, though their actions were subsequently approved by the Iranian authorities. On 29th November, 1979, the United States instituted proceeding before international court of justice against Iran for the purpose, inter alia, of securing the release of the hostages[65].

On 15th December, 1979 the court indicated interim measures of protection[66]. Part A of the order required Iran to release the hostages and restore to the United States full possession of her occupied premises. This was, however rejected by the Iranian authorities. Part B of the order demanded that "the Government of the United States of American and the Government of the Islamic Republic of Iran should not take any action and should ensure that no action is taken which may aggravate the tension between the two countries or render the existing dispute more difficult of solution". While therefore, the matter was subjudice United States military forces, on 24th - 25th April, 1980 launched operation Rice Bowl in Iranian territory in the course of an attempt to rescue the hostages[67]. The attempt was, however, failed because of technical failure.

In a report to the Security Council pursuant to Article 51 of the Charter, the USA justified its actions as being "in exercise of its inherent

[65] Ibid.
[66] Ibid., p. 7
[67] USA v. Iran (1980) ICJ Reports para.21

right to self-defence with the aim of extricating American nationals who are and remain the victims of the Iranian armed attack on our Embassy"[68].

The International Court of Justice, in its response to the USA action, felt that while it understood the frustration of the United States in this case, ".....the court cannot fail to express its concern in regard to the United States incursion into Iran....."[69] While therefore, the Court clearly expressed its displeasure at the United States action as a breach of the Judicial process, it refrained from any determination of the legality of the rescue mission under the UN Charter or under general international law, or any possible question of responsibility flowing from, since the question was not before it[70].

On the other hand, on occasion, the international community has shown its displeasure at this form of intervention. It did so following the United States intervention in Grenada 1983[71]. While at the UN Security Council, on October 27, the USA was able to defeat, by the use of the veto, a resolution condemning its intervention as illegal[72], a General Assembly

[68] Ibid., para. 93
[69] Ibid.
[70] Judges Morozov and Tarazi (Dissenting) Concluded that USA action was not justified by Article 51 of the UN Charter Pp. 57-64
[71] Gilmore, The Grenada International, London, (1984) p.1151. See also The Statement of Deputy Secretary of State Dam, 78 AJIL (1984) p.200
[72] SCOR, 2491st meeting, 27, October 1983.

resolution deploring the intervention was adopted by 108 votes to 9, with 27 abstentions[73].

Similarly, following the US intervention in Panama in 1989[74], the UN General Assembly, by a vote of 75 to 20, with 40 abstentions, condemning USA action as a "flagrant violation of international law.[75]" This was after a Security Council resolution critical of the intervention had been vetoed by the USA.

Another incident which is cited in support of this form of intervention is the NATO intervention in Libya (2011). In this case, NATO justified its intervention in Libya on an internationally recognised humanitarian disaster and protections of civilians' government of former Libyan President Muammar Gaddafi that was launching a brutal onslaught against Libyan protestors[76].

Similarly, the crisis in Central African Republic afforded instances such as genocide and crime against humanity which some countries had to intervene to protect their national. For example, Chad, Cameroon, etc intervened in Central African Republic to protect their nationals[77].

[73] G.A Resolution 38/7/, GADR,38th ses.supp. 47, p. 19 (1983)
[74] Nanda, V. The Validity of the USA Intervention in Panama under International Law. 84 AJIL (1990) p. 494.
[75] G.A Resolution 4/240, UN Press G.A/7977 p.91
[76] Alan K. A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign. Quarterly Journal: International Security (2013) Vol. 38, Issue 1, pp. 105-136.
[77] Abba M.K. bbc.hausa.com 10th February, 2014.

In general, the form of intervention under discussion has found little favour with the overwhelming number of UN members and there are cogent reasons for considering it to be unlawful[78]. Prominent among these is the specific provision in Article 2(4) of the Charter that restricts members from using force against the territorial integrity and political relations. The basic assumption of the Charter is that the maintenance of peace and security is the primary purpose of the UN, which is guaranteed by the ban on use of force. The charter aside, the international community appears now committed to a duty of non-intervention in the affairs of States[79].

### 4.5.2 Intervention by Request

Apart from the prominent legal contexts of the UN charter and the contemporary duty on non-intervention, the operation of this form of intervention is, as we have seen, open to abuse since only powerful states appears to undertake military operations of this sort. Also, according to Ladan[80], the justification for this form of intervention is often accompanied by several other justifications which tend to indicate the presence of motives other than the protection of nationals.

[78] Goodrich et al, Charter of the United Nations: Commentary and Document Op. Cit. P. 49.
[79] Ibid.
[80] Ladan, M.T. Review of the Law of Non-Intervention. Column 1, Page 9, New Nigeria, Newspaper, Monday, December 1, 2003.

Thus, the United States justified further its intervention in Grenada on the following grounds:- a request to intervene from the Organisation of Eastern Caribbean states (OECS), of which Grenada was a member, and a request from the governor-general of Grenada[81]. Such also was the case with the intervention in Panama, the restoration of democracy: the protection of the Panama Canal: and the prosecution of General Noriega (the Panamanian leader) for drug-related offenses[82].

That, of course, is not to suggest that there might not be any situation or circumstances where the overwhelming need for the protection of nationals is present. Examples of such situations are not difficult to find. The situation in Zaire (formerly Congo Kinshasa) has afforded several instances this includes genocide, war crimes and crime against humanity where various European powers have had to intervene to protect their nationals[83]. So also in the Gabon, Central African Republic, Cote d'Ivoire, Cameroon and Togo. Belgium and France quite recently intervened at various times to protect their nationals in Rwanda and Burundi.

Doubtless, states will intervene to protect their nationals in danger of their lives where no immediate protection is afforded by the international community. It therefore follows according to some writers, that "it would

[81] Ibid.
[82] Ibid.
[83] Lillich, R.B. Forcible Self-Help to Protect Human Rights. 53 Iowa Law Report (1967) p. 325

seem preferable to accept the validity of the rule i.e., permitting the use of force in self-defence to protect nationals abroad in carefully restricted, Caroline - style situation"[84] i.e. force may be used only within the strict limits of what is absolutely necessary and proportionate to the imminent danger in order to prevent further violations of human rights. But that is a view that weigh against the basic assumptions of the charter:- peace and state autonomy. These assumptions are embodied and concretised in Article 2(4) which today may probably be regarded as a rule of Jus Cogent. It probably runs against the contemporary principle of non-intervention.

### 4.5.3 Humanitarian Intervention

The right of States to use force to protect the nationals of another state from arbitrary and inhuman treatment occurs in classical international law[85]. Thus Vattel wrote: "If a prince, by violating the fundamental laws, gives his subjects a lawful cause for resisting him, if, by his unsupportable tyranny, he bring on a nationals revolt against him, any foreign power may rightfully give assistance to an oppressed people who ask for its aid"[86].

[84] Shaw, M.N. International Law. Op. Cit., p. 1144
[85] Lillich, R.B. Forcible Self-Help by State to Protect Human Rights", Op. Cit. p.325
[86] Vattel, The Law of Nations (Carnegie ed., Fonwick trns, (1758) Book 2. Chapter 4, Sec. 56

It is of interest also to note that majority of the writers of the nineteenth century such as Lillichi[87], Grotious[88], Gentili[89], etc. Admitted the existence of the right of humanitarian intervention[90]. Even so Professor Brownlie highlights the controversy surrounding this alleged right by saying:

> *The doctrine was inherently vague and its protagonists gave it a variety of forms. Some writers restricted it to action to free a nation oppressed by another; some considered its object to be put to an end to crimes and slaughter; some referred to "tyranny" others to extreme cruelty; some to religious persecution, and lastly, some confused the issue by considering as awful intervention in case of feeble government or "misrule" leading to anarchy.....*[91]

Even so, some jurists writing on the use of force in the post - 1945 period, have accepted "humanitarian intervention" in strictly defined situations either as a customary rule of international law or an exception to the general prohibition of force[92]. To examine these claims, it is important to undertake an inquiry into the relevant state practice in the post - 1945 period. It would then be convenient to make a statement of principle on the

[87] Lillich, R.B. Forcible Self-Help by State to Protect Human Rights", Op. Cit. p.325
[88] Grotius H. The Customary Law Doctrine of Humanitarian Intervention. Op. Cit. P. 203.
[89] Gentili, A Humanitarian Intervention. Op. Cit. P. 75.
[90] Brownlie, I. International Law and the Use of Force by States, Op. Cit., p. 338-34
[91] Ibid.
[92] Ibid.

relevant law. Before then it will be useful to recall a number of occasions in which this right has been asserted by states and jurists alike:

(a) The Indian intervention in East Pakistan (Bangladesh), 1971[93]

(b) The Tanzania intervention in Uganda 1979[94]

(c) The Vietnamese intervention in Cambodia,[95]

(d) The Allied Force Intervention in Iraq, 1991[96]

(e) NATO intervention in Libya, 2011[97]

(f) France Intervention in Mali, 2013[98]

(g) France Intervention in Cote d'Ivoire 2011[99]

(h) France and African Union Intervention in Central African Republic, 2013[100].

### (a) **Indian Intervention in Pakistan 1971**

The Indian intervention in East Pakistan followed the declaration of independence by East Pakistan from Pakistan[101]. The striking feature of

[93] Haris, D. Cases and Materials on International Law. Op. Cit., p. 847
[94] Shaw, M.N. International Law. Op.Cit., p. 1131
[95] Nanada, V. Tragedies in Northern Iraq, Liberia, Yugoslavia and Haiti:- Revisiting the Validity of Humanitarian Intervention Under International Law: The Strife for Humanity. 6 LJIL(1993) p.91
[96] Murphy, S.D. Humanitarian Intervention: The United Nations in an Evolving World Order. University of Pennsylvania Press (1996) p. 185.
[97] Anonymous (2013) Internet: Background information on Responsibility to protect. Retrieved 10 February, 2014 from www.un.org.
[98] Sean D.M. (2013). Internal Global Policy. Humanitarian Intervention in Libya. Retrieved 10 February, 2014 – www.humanitarian-intervention.html
[99] Anonymous (2013) Internet: Background information on responsibility to protect. Op Cit. 89.
[100] Marie, L. (2013) France and African Union Intervention in Central African Republic. Retrieved 11 February, 2014 www.willwriteforproven
[101] Haris, D. Cases and Materials on International Law. Op. Cit., p. 847

this intervention was the attempt by India in the Security Council to justify its action firstly, in terms of self-defence in reaction to the bombing by Pakistan forces of airfields in Indian, and secondly, the protection of its, "vital interest" arising from the threat posed by the mass exodus of refugees. But India did not refer to its action as a specific instance of "humanitarian intervention". The substantial motive appeared to be the break-up of Pakistan.

A Security Council draft resolution which called for a cease-fire and a withdrawal of troops was vetoed by the Soviet Union. On 7th December, 1971, the matter, having been transferred to the General Assembly, the Assembly adopted by a vote of 104 to 11, with 10 abstentions, a resolution which called for "a withdrawal of armed forces" and urged that "efforts be intensified in order to bring about.... conditions necessary for the revolutionary return of the East Pakistan refugees to their homes"; and that "every effort be made to safeguard their lives and well-being of the civilian population in the area of conflict"[102].

[102] UN G.A. Resolution 2793(XXVI)

### (b) Tanzania Intervention in Uganda

Following the Tanzania intervention in Uganda[103], several statements were made which pointed to Tanzania's action as being self-defence, punitive action or retaliation; but interestingly, Tanzania did not justify its action as a specific instance of humanitarian intervention[104].

The Tanzania action generated a hostile reaction from several African leaders. However, the Organization Union of Africa (OUA) did not make any official pronouncement on the intervention as such. A Ugandan request for a meeting of the Security Council of the UN to consider the situation was withdrawn on 5th April, 1979[105].

### (c) Vietnamese Intervention in Cambodia

From all indications, it would appear also that the international community rejected the Vietnamese intervention in Cambodia as an instance of humanitarian intervention[106].

### (d) Allied Forces Intervention in Iraq 1991

After the Iraq army occupying Kuwait was defeated[107], rebellions against President Saddam Hussein's rule occurred in both northern and

[103] Shaw, M.N. International Law. Op.Cit., p. 1131
[104] Ibid.
[105] Ibid.
[106] Nanada, V. Tragedies in Northern Iraq, Liberia, Yugoslavia and Haiti:- Revisiting the Validity of Humanitarian Intervention Under International Law: The Strife for Humanity. 6 LJIL(1993) p.91
[107] Murphy, S.D. Humanitarian Intervention: The United Nations in an Evolving World Order. University of Pennsylvania Press (1996) p. 185.

southern Iraq. These were put down with brutal ferocity by the still strong Iraq army causing a flood of refugees. In northern Iraq well over one million Kurdish refugees fled to the Turkey and Iranian borders where they received some western aid, although many died[108]. Resolution 688 was a response to this situation. It was adopted by 10 voters to three, with two abstentions. The resolution inter alia provides in para. 1 "condemns the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, consequences of which threaten international peace and security in the region"[109]. Following the adoption of Resolution 688 in April, 1991 US, UK and French land forces enter Iraq on humanitarian ground. This initiative was taken further by US and UK in 1999[110].

Although not authorised by the Security Council, these initiatives while criticised by Iraq and some other states as illegal, were not formally condemned by the UN. The US and UK justified their inversion on humanitarian reason[111].

[108] Ibid.
[109] See S/RES/0688 (11991) 5 April, 1991.
[110] Ibid.
[111] Ibid.

## (e) France Intervention in Mali, 2013

The French government justified its military intervention in Mali on humanitarian and security ground. Francois Hollande's government argued that the Islamic forces in Mali represented an intolerable threat to the human rights of Malian citizens as well as the security of West Africa and Europe[112].

Despite calls for diplomatic mediation in Mali, the UN and Western powers had not made any serious efforts to come to a political solution and have instead adopted Resolution 2071 of 12/10/2012 to authorise an African-backed intervention. The resolution provides inter alia:

> *Calls upon, in this context, member states, regional and international organizations including the African Union and the European union, to provide as soon as possible coordinated assistance, expertise, training and capacity-building support to the Armed and Security Forces of Mali, consistent with their domestic requirements, in order to restore the authority of the state of Mali over its entire national territory, to uphold the unity and territorial integrity of Mali to reduce the threat posed by AQIM and affiliated groups[113].*

[112] Sean D.M. (2013). Internal Global Policy. Humanitarian Intervention in Libya. Retrieved 10 February, 2014 – www.humanitarian-intervention.html

[113] www.un.org/see UN Security Council Resolution 1973 (2011).

The Lynch[114] argued that the resolution does not explicitly call for immediate military action. It expresses the council's "readiness" to authorise a full-fledged intervention.

**(f) NATO Intervention in Libya 2011**

Following widespread and systematic attacks against the civilian population by the regime of the Libyan Arab Jamahiriya[115] the UN Security Council, on 26 February 2011, unanimously adopted a resolution 1970, making explicit reference to the responsibility to protect citizens. Deploring what it called "the gross and systematic violation of human rights" in strife-torn Libya, the Security Council demanded an end to the violence "recalling the Libyan authorities responsibility to protect its population". The council provides:

1. Demands an immediate end to the violence and calls for steps to fulfil the legitimate demands of the population;
2. Urges the Libyan authorities to;
    a. Act with the utmost restraint, respect human rights and international humanitarian law; and allow immediate access for international human rights monitors;

[114] Lynch (2013) Internet Global Policy; humanitarian intervention in Mali. Retrieved 10 February, 2014 www.humaniatrain-intervention.html

[115] Anonymous (2013) Internet: Background information on Responsibility to protect. Retrieved 10 February, 2014 from www.un.org.

b. Ensure the safety of all foreign nationals and their assets and facilitate the departure of those wishing to leave the country[116].

In resolution 1973 adopted on 17 March 2011, the Security Council demanded an immediate ceasefire in Libya, including an end to ongoing attacks against civilians, which it said might constitute 'crime against humanity'' the council authorised member states to take "all necessary measures" to protect civilians under threat of attack in the country, while excluding a foreign occupation force of any form on any part of Libyan territory. A few days later, acting on the resolution NATO planes started striking at Gaddafi's forces[117]. It is the view of this writer that this intervention is illegal and a violation of provision of art. 2(4) of the Charter.

**(g) France Intervention in Cote d'Ivoire 2011**

In response to the escalating post-election violence against the population of Cote d'Ivoire in late 2010 and early 2011[118] the UN Security council, on 30th March 2011, unanimously adopted resolution 1975 condemning the gross human rights violation committed by supporters of both ex-president Laurent Gbagbo and president Ouattara. The resolution cited "the primary responsibility of each state to protect civilians", called for the immediate transfer of power to president Ouattara, the victor in the

[116] www.un.org/news/press/docs/2011/SC10187.doc.html
[117] Anonymous (2013) Internet: Background information on responsibility to protect. Op Cit. 89.
[118] Ibid.

elections, and reaffirmed that the UN operation in Cote d'Ivoire (UNOCI) could use "all necessary means to protect life and property"[119]. The resolution in para. (1)

> *urges all the Ivorian parties and other stakeholders to respect the will of the people and the election of Alassane Dramane Ouattara as president of Cote d'Ivoire, as recognised by ECOWAS, the African Union and the rest of international community expresses its concern at the recent escalation of violence and demands an immediate end to the violence against civilians, including women, children and internally displaced persons*[120]*.*

The council further provided in paragraph 6

> *Recalls its authorization and stresses its full support given to the UNOCI, while impartially implementing its mandate to use all necessary means to carry out its mandate to protect civilians under imminent threat of physical violence, within its capabilities and its areas of deployment including to prevent the use of heavy weapons against the civilian population...*[121]

In an effort to protect the people of Cote d'Ivoire from further atrocities, France and UNOCI on 4 April 2011 began a military operation; and president Gbagbo's hold on power ended on 11 April 2011 when he was arrested by France and UNOCI forces. It is the view of this writer that

[119] Ibid.
[120] www.un.org/news/press/docs/2011/SC 10215.doc.html
[121] Ibid.

the France Military intervention is illegal for the primary reason that the Security Council did not mandate France Forces to oust Gbagbo.

**(h) France and African Union Intervention in Central Africa Republic (2013)**

After the ouster of Bozize, Seleka leader Michel Djotopdia proclaimed himself president of Central Africa Republic. In September 2013, he dissolved Seleka and only integrated some of them, into the army, leaving the others unattended to. Since then the country has plunged into chaos as undisciplined rebels commit widespread looting and abuses against those they consider as Bozize supporters. The most worrying aspect of the crisis is the sectarian violence between religious communities. France and Africa Union intervened to restore order in the country. France justified its intervention on humanitarian grounds, that the situation is deteriorating badly and grave human rights violations are being committed including rape and massacres[122]. It is the view of this writer that the French intervention is illegal and accelerated grave human right violations. Neither the French Forces nor that of African Union was active on the ground.

### 4.5.3. 1 Comment

The cases examined in the preceding pages do not appear to provide a basis for a conclusion that a rule of humanitarian intervention exist in

[122] Marie, L. (2013) France and African Union Intervention in Central African Republic. Retrieved 11 February, 2014 www.willwriteforproven

customary international law. More so, the specific undertaking by states to refrain from threat or use of force in their international relations casts serious doubts on the incorporation of such a rule under the Charter.

It is interesting to note, too, how in recent times the right of humanitarian intervention is linked to the concept of human rights[123]. It is submitted by this writer that force may only be used within the strict limits of what is absolutely necessary in order to prevent further violations of fundamental human rights. But the appeal of human rights is an argument, which appears to have been rejected in the Nicaragua case. There, the court, in responding to the United States argument that the use of force by the USA was legal since it was aimed at preserving human rights in Nicaragua, stated: "the use of force could not be the appropriate method to monitor or ensure ....respect (for human rights)..... The court concludes that the argument derived from the preservation of human rights in Nicaragua cannot afford a legal justification for the conduct of the United States.''[124]

It may, of course, be argued that the court in this case was responding to the methods used and as such, did not pronounce on the legality of humanitarian intervention. But even so, the Court's declaration, elsewhere in the judgement, that force may be used only in self-defence

[123] Ladan, M.T. Cases and Materials on Public International Law. Op. Cit., p.85
[124] Lillich, R.B. Forcible Self-Help by States to Protect Human Rights, Op. Cit. P. 325

against an armed attack appears to reaffirm the original intent of the Charter and the positions commonly held by states in the post-cold war period, various interventions have been undertaken that have been claimed to serve humanitarian purposes. But, in assessing the legal validity of humanitarian intervention, at last, the legal position is that given by the United kingdom Government:

> *.....the best case that can be made in support of humanitarian intervention is that it cannot be said to be unambiguously illegal..... But the overwhelming majority of contemporary legal opinions comes down against the existence of a right of humanitarian intervention, for three main reasons, first, the UN Charter and the corpus of modern international law do not seem specifically to incorporate such a right; secondly, state practice in the past, two centuries, and especially since 1945, at best provides only a handful of genuine cases of humanitarian intervention and, on most assessments, none, at all; and finally, on prudential grounds, that the scope for abusing such a right argues strongly against its creation ..... . In essence, therefore, the case against making humanitarian intervention an exception to the principle of non-intervention is that it's doubtful benefits would be heavily out-weighed by its costs in terms of respect for international law*[125]

This above position of UK is supported and concurred by this writer. This is because state practice which advocates the right for humanitarian intervention appeared to have provided an uncertain basis on which to rest

[125] UK Foreign Policy Document No. 148, Reprinted in UK MIL (1986) 57 BYIL (1989) p. 614.

such a right. History has shown that humanitarian ends are almost always mixed with other less laudable motives for intervening; and because often the "humanitarian" benefits of an intervention are either not claimed by the intervening state or are only put forward as an *ex post facto* justification of the intervention e.g. US intervention in Iraq (2003) and NATO intervention in Libya (2011).

### 4.5.4 Intervention to Enforce Provision of a Treaty

This refers to the alleged right of intervention to enforce provisions of a treaty[126]. Instance of this form of intervention is the Turkish intervention in Cyprus in 1974.

#### 4.5.4.1 The Turkish Intervention in Cyprus, 1974

Cyprus has a population which is four-fifths Greek Cypriot and one-fifth Turkish Cypriot. The United Nations Force in Cyprus (UNFICYP) was established there in 1964 to help keep the peace between communities. Following the overthrow of the Makarios Government in 1974 by a group supported by Greece and resulting in the establishment of Greek Cypriot Junta, Turkey invaded the Island in the same month[127]. The Security Council called upon "all states to respect the sovereignty, independence and territorial integrity of Cyprus." Security Council demanded "an

[126] Brownlie, I. International Law and the Use of Force by States. Op. Cit., Pp. 342-4
[127] Ibid.

immediate end to the foreign military intervention" in Cyprus that was contrary to such respect[128]. In 1983, an independent state called the Turkish Republic of Northern Cyprus was declared to have been established. Turkey claimed that its intervention was justified under the treaty[129] made between Cyprus, Greece, Turkey and the United Kingdom in 1960. By this treaty, Cyprus undertook to "ensure the maintenance of its independence, territorial integrity and security, as well as respect for its constitution" (Article 1). The three guaranteeing powers, which undertook to recognise and guarantee the independence, territorial integrity and security of Cyprus (Article 2), agreed in the event of a breach of the treaty to consult to determine what representations or measures were necessary. Insofar as concerted action proved impossible, each of them reserved "the right to take action with the sole aim of establishing the state of affairs created" by the treaty (Article 4).

Insofar as the legality for the Turkish intervention is concerned, it is interesting to note that at no stage had there been tripartite consultations in terms of the treaty as to necessitate "concerted action" to deal with the situation created by the overthrow of the Makarios government. Even so it would be a source of controversy to seek to justify Turkish military

[128] SC Resolution 353 (1974), SCOR, 29th year, Resolutions and Decisions. P.7
[129] Brownlie, I. International Law and the Use of Force by States. Op. Cit., Pp. 342-4

intervention on the basis of the treaty. Contemporary international law is categorical in its prohibition of use of force except in self-defence and action authorised by the Security Council. It is also condemnatory of intervention; to seek to justify the Turkish action in terms of the treaty appears to contradict these rules of international law.

From different angles but in terms of Article 103 of the Charter of the UN, if there should be conflict between the obligations of members of the UN under the Charter and their obligations under any other international agreement, their obligations under the Charter should prevail. Therefore, Turkey, a member of the UN, was, prima facie, bound by the provisions of the Charter to refrain from its military intervention irrespective of the right claimed by her under the Treaty of Guarantee.

### 4.5.5 Intervention in Support of Democracy (Reagan Doctrine)[130]

Like the use of force to impose or maintain Socialism, a claim to maintain democracy has been asserted. Instances are the US interventions in Dominican Republic (1965)[131], Grenada (1980)[132] and Panama (1989)[133]. The doctrine underlying this form of intervention is hard to sustain. The difficulty lies in the fact that democracy cannot be defined with precision.

[130] Schachter, The Legality of Pro-Democratic Invasion. 78 AJIL (1984) p.642.
[131] See Statement by President Johnson, 52 US Department of State Bull. (1965) Pp. 745-6
[132] Ibid., p. 103
[133] Ibid., p. 106

Then, again, there is the professed bias in charactering "unfavourable" government as "undemocratic". For example, in February 2004, opposition forces staged an armed rebellion against the elected president of Haiti, Jean Bertrand Aristide. The US, France and Canada supported this coup[134]. Similarly, in 2013 elected President of Egypt Morsi was overthrown by military opposition supported by US, UK and Israel[135]. Likewise, on Saturday February 22, 2014 oppositions supported by US, France, etc overthrew elected president of Ukraine Victor Yanukovych because his government has no sympathy for US and European countries[136]. The international court of justice appears to have rejected the doctrine in the Nicaragua, when it is said in para. 209: "the court could not contemplate the creation of a new rule opening up a right of intervention by one state against another on the ground that the latter has opted for some particular ideology or political system.... there is no "general right of intervention within another state."

The court in the instant case refused to broaden the right of intervention to encompass democracy as advocated by the US. To do this would mean opening the doors for chaos and consequently for bigger

[134] Alan, K. (2013). Internet Global Policy, Military-Expansion-and-Intervention. Retried 10 February, 2014 – www.haiti-eygpt-intervention.html
[135] Ibid.
[136] Anonymous (2014), www.bbc/news.com February 22, 2014.

states to choose by coercion the form of government which best suit their interests. This is presently the position in Iraq where the democratic set up dances with the tone dictated by the Western countries particularly US in virtually all her policies. Similarly in his January 28, 2003 state of the union address, President Bush of the US explicitly referred to Saddam Hussein's deplorable record on human rights[137]. Several months earlier, in an address to the UN, Bush stated that "liberty for the Iraqi people is a great moral cause and a great strategic goal.....if we fail to act in the face of danger, the people of Iraq will continue to live in brutal submission. These points were echoed in president Bush's statement to the Iraqi people announcing the impending military action, "in a free Iraqi, will be no more war of aggression against your neighbours, no more poison factories, no more execution of incidents, no more torture chambers, and rape room[138].

However, the consequences of intervention in Iraq led to civil war and the death of over 100,000 Iraqis. It turned the country into a battle field of regional powers, rather than a buffer. The weakness of the new Iraq has helped enable the resurgence of Iran, setting off a regional power struggle between Saudi Arabia and Turkey on one side and Iran on the other side with tragic consequences in Syria.

[137] Drumble, M.A. Self Defence and the Use of Force: Breaking the Rules or Birth? Journal of International Law Studies (2003), Vol. 4, Pp.409-29
[138] Ibid.

In 1997 Nigeria led ECOWAS forces intervened and restored Ahmad Tijjani Kabbah administration.[139] Currently, intervention upon suspicions of possession of weapons of mass destructions was the present position of the US and her allies in attacking Iraq and in presently preparing to attack Syria and Iran[140]. All these exemptions relied upon by these state actors to justify intervention go contrary to the provision of the UN Charter hence an affront on the spirit of sovereignty.

### 4.5.6 Intervention/Non-intervention in the Post-Cold War Period

Up to this point, we have examined the law and surveyed the practice relating to intervention. It would appear that, in general, states have condemned, with the possible exception of intervention in support of self-determination, every intervention involving use of force outside the permitted exceptions under the UN Charter. Explicitly, or by implication, they have not accepted exceptions to the alleged rule of non-intervention. However; it now appears different in the aftermath of the Cold War. On the horizon of this discussion, there lies a number of recent episodes of intervention either involving the UN or by individual or groups of states and this warrants appropriate description and analysis to locate the juridical basis of the intervention therein.

[139] Ibid.
[140] Ibid.

### 4.5.6.1 Intervention in Haiti and Liberia.

Following the failure of the diplomatic approach to restore constitutional rule, a multinational force from countries headed by the USA mounted an intervention in Haiti in August 1994. The facts of the case are, on September 30, 1991, a Military Coup under the leadership of Lieutenant General Raoul Cedras overthrew the government of Jean-Bertrand Aristide, the first popularly elected president in Haiti history. President George H.W. Bush called for the restoration of democracy. On 19th September 1994 – 31st March 1995 was an intervention designed to remove the military regime installed by the 1991 Haitian Coup d'etat. The operation was effectively authorised by the 31 July 1994 UNSC 940. This action was authorized by the UN Security Council under Chapter VII of the charter through its adoption of resolution 940 (1994) of 21st July, 1994[141]. As regards this intervention, it is noteworthy that it was authorised by the Security Council and one can only surmise that the Council as such saw the need for an exceptional response to the situation created by the breakdown of internal law and order and constitutional rule. Even so this intervention appeared to represent the breaking of new ground on the part

[141] Nanada, V. Tragedies in Northern Iraq, Liberia, Yugoslavia and Haiti; Op. Cit. P. 91.

of the UN to intervene in the affairs of sovereign states and as such went beyond the dictates of the alleged rule of non-intervention.

In December, 1989, civil war broke out in the West African State of Liberia. In August 1990, the Economic Community of West African States (ECOWAS) intervened in the civil war through the ECOWAS Monitoring Group (ECOMOG) which it had set up.[142] Almost three years after ECOMOG's intervention in Liberia, the Security Council became seized of the Liberian conflict by the unanimous adoption of Resolution 788(1992) of 19th November, 1992. By the resolution, the Security Council determined that the deterioration of the situation (Civil war) in Liberia constituted a threat to international peace and security, particularly in West Africa as a whole, and imposed under chapter VII of the Charter, "a general and complete embargo on all deliveries of weapons and military equipment to Liberia except weapons and military equipment destined for the sole use of ECOMOG".

In the interest of ensuring the implementation of the Yamoussoukro IV Accord as "the best possible framework for a peaceful resolution of the Liberian conflict," the Security Council recognised the role of ECOWAS as a regional agency or arrangement by recalling the provisions of Chapter VII

[142] Ibid., p.132-6

of the UN Charter in paragraph 6 of the preamble of Resolution 788 (1992)[143].

Unlike the cases of Somalia and the former Yugoslavia, the Security Council did not actively intervene in the Liberian conflict. Even so, two significant aspect of Resolution 788 (1992) are worth noting. First, by determining that the civil war constituted a threat to international peace, the war as such as seized being limited by the domestic jurisdiction" clause in article 2, paragraph 7, of the Charter. This means also that the war came within the powers of the Council under Chapter VII of the Charter. That the civil war in Liberia was recognised as of international concern was already evidenced in the efforts made by the UN, OAU and ECOWAS to achieve peaceful settlement. Thus, on 22nd January, 1991, the Security Council issued a statement, which called on all parties to the war to respect the 28th November, 1990 Bamako Cease-fire Agreement and fully co-operate with ECOWAS in its efforts to restore peace in Liberia.

Secondly, it is significant that though ECOWAS may not be a regional arrangement or agency under chapter VII of the UN Charter, Resolution 788 (1992), has recognised it as such. UNSCR 788 regarding Liberia was adopted on November 19, 1992 inter alia provides:

[143] Ibid.

1. commends ECOWAS for its efforts to restore peace, security and stability in Liberia;

2. Reaffirms its belief that the Yamoussoukro IV Accord offers the best possible framework for a peaceful resolution of the Liberian conflict by creating the necessary conditions for free and fair elections in Liberia and calls upon ECOWAS to continue its efforts to assist in the peaceful implementation of the accord.

The council continues to provide in para. 10 of the resolution requests all states to respect the measures established by ECOWAS to bring about solution to the conflict in Liberia[144];

In respect of the recognition, ECOWAS presumably could take measures relating to the maintenance of international peace and security in accordance with Article 52 and 54 of the Charter. But in the absence of an explicit authorisation by the Security Council to take enforcement action, a regional agency under the Charter can only take measures relating exclusively to pacific settlement of disputes. Equally, where appropriate, the Security Council has power under Article 53 to utilise regional agencies for enforcement under its authority.

[144] UNSC RES 788/1992.

In unravelling the threat of ECOWAS involvement by some commentators that ECOWAS, through ECOMOG, had prior to the adoption of Resolution 788 (1992) engaged in action which was more in consonance with enforcement than peace-making. It was in that context that in October 1990, ECOMOG launched artillery attacks against the National Patriotic front of Liberia (NPEL) "to push them back in order to create a buffer zone between their forces and government forces". In a similar vein, was the seizure of territorial under NPEL control[145].

But it is interesting that Resolution 788 did not pronounce on ECOMOG's action. Does this constitute ex-post facto approval of ECOMOG's action? Or can it be that the authorisation required by article 53 of the Charter lies in the failure by the Security Council to disapprove the action? The precedent furnished by the OAS practice in the Dominican Republic case (1960) and Cuban case (1962)[146] clearly suggests otherwise and though some American Jurists, including Chayes, would support a failure to disapprove as authorisation arguments[147]. A more acceptable view is that proffered by Professor Bowett that, that argument "must be nonsense both in terms of the plain meaning of authorisation 'and the fact that US Veto would thus always ensure 'authorisation' of the OAS

[145] Ibid.
[146] Ibid.
[147] Ibid.

action"[148]. Accordingly enforcement action under Article 53 of the Charter can only be subject to prior authorisation of the Security Council.

### 4.5.7 Intervention in the Fight against Terrorism

This is the allege right of intervention against terrorism or terrorists activities. The most recent instances are the USA intervention in Afghanistan 2001/2 and Iraq 2003[149]. The former in pursuit of "Al-Qaeda network of terrorist Osama bin Laden" while the later in order to destroy Saddam's Weapons of Mass Destructions. Currently US and it is allied are also advocating to use force to intervene in Iran in search of nuclear weapons. The operation of this kind of intervention is to a large extent open to abuse since only powerful states appear to be invoking it. It is submitted that the justification for this form of intervention is often accompanied by several other justifications which tend to indicate the presence of other motives than the fight against terrorism.

## 4.6 Conclusion

The Question of non-intervention embodied principally in UN General Assembly Resolutions 2131 and 2625 has so far guided our concern in the preceding pages. These resolutions emphasise the need for states to refrain from interfering in the internal affairs of other states. Not only have

[148] Bowett, D.W. Self-Defence in International Law, Op. Cit., p. 90
[149] Ladan, M.T. Cases and Materials on Public International Law. Op. Cit., p.85

they reinforced the principle of state sovereignty and sovereign equality of states, they also serve to ensure the maintenance of international peace and security. No doubt the development of the principle of non-intervention, which these resolutions contain, has been influenced by third World ideology and opinion. The African and Asian states backed by Latin American and the former Eastern bloc saw in the principle an attempt to limit outside neo-colonial attempts to influence events in other countries for the interest of the intervening country.

# CHAPTER FIVE

## 5. 0 Summary, Conclusion and Recommendations

## 5.1 Introduction

The main task of this chapter is to summarize what we have said in the preceding chapters and to endeavour to make findings at the end of this work. The chapter will try to proffer suggestions/recommendations based on what was discussed in the previous chapters.

## 5.2 Summary of the Principles of Non-Intervention

The principle of non-intervention has its origin as far back as medieval period. It is a well established principle of customary international law[1]. Its purpose is to limit illegal involvement of one country in the affairs of others in the ordinary course of relationship among civilized nations. One of the limitations evolved by customary international law is the principle of non-intervention[2]. This means that every country or nation which is a sovereign state has the right to conduct its affairs without outside interference[3]. One of these rights is the choice of a political, economic, social and cultural system and the formulation of foreign policy[4].

[1] Corfu Channel Case UK v Albania (1949) I.C.J. Report p.35
[2] Corfu Channel Case (Supra.) p.137
[3] Nicaragua v. USA (1986) I.C.J. Report. para. 202
[4] Browlie, I. International Law and the Use of Force by States. 37BYIL {1961) p.373

However, the principle of non-intervention does not mean prohibition of co-operation, mutual, bilateral and multilateral co-operation and understanding between nations. In fact, because of the complexity of modern world, and because of interconnections and interdependency of nations in most fields of endeavours such as social, cultural, political and economic elements, it has become necessary for nations to evolve common law under which to regulate their activities[5]. Thus, it was argued, that the law of non-intervention merely seeks to prohibit intervention in matters essentially within the domestic jurisdiction of states.

## 5.3 Conclusion

Having analysed the principle of Non-Intervention in International Law, the following are the finding of this research:

I. Though in many instances, interventions take the form of use of force or threat of use of force, also non-use of force is an important form of the doctrine of non-intervention. So, intervention as it was initially conceived meant use of force. The finding of this writer is that, the interpretation of the phrase “use of force” is now widened or extended to include non-use of force, which will have same effect with use of force. For example, the US proclamation or declaration in the

[5] Henkin Pugh, et al. International Law: Cases and Materials. West Publishing Co. St Paul, Minnessota, 2nd ed.,(1987) p.25-6

Ugandan Case regarding the prohibition of same-sex marriage by the Ugandan authorities that it will sever diplomatic relations and stop giving financial aids to Uganda if it did not repeal the law, to which Ugandan authorities tacitly repealed same. This tantamount to depravation of political independence and territorial integrity of Uganda even though force or threat of use of force is absent as contemplated by art. 2(4) of the United Nations Charter. Hence violation of the principle of non-intervention.

II. That the anticipatory self-defence and intervention by the authorization of Security council as statutory exceptions under the Charter of the UN are to a large extent open to abuse since only powerful states appear to be invoking them. In respect of anticipatory self-defence, certain states go beyond the provision of the Charter and this occasioned frequent recourse to the use of force, as such there is outright infringement of the Charter. For example in the current Israel-Palestine combat in Gaza, Israel justification for her initiation of hostilities in Gaza against Hamas as self defence cannot be upheld because her action is not proportionate to the object of stopping the infringement. Similarly intervention by the authorization of Security Council as second statutory exception to use force is often

accompanied by several other justifications which tend to indicate the presence of other motives.

It is also the finding of this research that, the intervention for the protection of lives and property of nationals, intervention by request, humanitarian intervention, intervention to enforce the provision of a treaty, intervention in support of democracy and intervention against terrorism as an exceptions to the general rule of non-intervention under customary international law has found little favour with the overwhelming number of UN members and there are cogent reasons for considering it to be unlawful[6]. Prominent among these is the specific provision in Article 2(4) of the Charter that restricts members from using force against the territorial integrity and political independence of any sovereign state. The basic assumption of the Charter is that the maintenance of peace and security is the primary purpose of the UN, which is guaranteed by the ban on use of force.

III. Another finding of this research is that, in some few occasions the method of intervention is not by use of force, but non-use of force. For example, giving of financial aids, supply of materials, food, arms

[6] G.A. Resolution 4/240, UN Press G.A./7977 p. 91.

and logistic[7]. Sometimes, intervention take the form of aiding insurgents to revolt against legitimate government[8] as in Libya and Syria or, aiding a legitimately constituted governments to suppress groups of people with different ideology or different system of economy[9] as in Egypt. It is also the finding of this research that, in some of these interventions, the form or type of intervention is by non-use of force. The form of non-use of force generated same effect with the form of use of force. For example, it deprived the countries upon which intervention is set up the political independence and territorial integrity. For example, as we have learnt in Chapter three, Hungary was deprived of deciding for itself what system of economy was suitable for her to practice. In Ukraine, the USA and its western allies sponsored rebellions that ousted a legitimate government of Victor Yanukovych in February, 2014 and installed a government with sympathy towards capitalist system of economy[10]. In Nicaragua, the contras were assisted with aids varying from military, logistics to material aid. In all these instances, there was no use of force.

[7] Harris, D. Cases and Materials on International Law. . Sweet and Maxwell, London, 7th Ed., (2010) p. 728
[8] Nicaragua v. USA (Supra) p. 728
[9] Ibid.
[10] Anonymous (2014) www.algazeera.com/indepth/sportlight/2014/02/2011222121213770475.html. Retrieved February 20, 2014 at 11:30am

IV. It is also the finding of this research that, some of the modern features of intervention are the development of unauthorized economic and political pressures to bear on a country, with the view of changing its stand or policy. Some of the methods used in actualizing these objectives are the illegal exertion of economic and political pressure by some powerful states such as US and its allies without the authorization of the United Nations Security Council on a country whose co-operation is needed. Some economic measures usually embarking upon include illegal economic embargo or illegal imposition of trade sanctions. In most cases, when these embargoes are imposed, they touch the self-determination character of a country, thereby violating the rule against non-intervention. For example, the illegal economic sanctions against Iraq in 2001, Libya in 2011, and presently North Korea (2012), Iran (2012), Syria (2013), Russia by USA and European Union (2014) etc. These measures take the form of non-use of force which has similar effect with cases where there is physical combat.

V. It is also the finding of this research that, Non-use of force may take the form of political pressure put to bear on a country whose cooperation is needed or whose policy is needed to change. In other

words at times, intervention needs not necessarily involve the use of force or threat of use of force. It may take the form of political pressures. For example, a country like US may politically pressurise another country to adopt democratic system of government in preference of a monarchical system. Recently, we have seen how USA is putting political pressure to bear on developing countries to adopt democratic system of government, for example, Iran, Iraq, Libya, Sudan and presently Egypt. These are interventions, which take the form of political coercion rather than the use of force which thought to be the most effective way of intervention.

## 5.4 **Recommendations**

Though it is quite appreciated that, there is currently in existence principle of non-intervention, it is far from being adequate. To this extent the following measures are recommended:

I. International law lawyers should advocate for the review of the law of non-intervention and the member states should deliberate for the review of the law at the United Nations floor.

II. That in reviewing the law of non-intervention some coherence be brought into the theory and the application of the exceptions to the general rule be carefully defined. Further an effective leadership

should be established at the United Nations by democratically electing the Secretary General and other principal officers through free and fear election not by super powers to nominate or influence the nomination of any candidate, any action to be taking must be approved by the General Assembly. This can only be possible when the veto power of the permanent Security Council members is properly regulated or abolished and the permanent Security Council membership should be democratically elected and rotated.

III. That in reviewing the law of non-intervention, the meaning of the phrase, “use of force” should be given wider interpretation to include instances where although there is no use of force, but the effect of the fact complained of is the same with action which force or threat of use of force was used. The crux of the matter is that the phrase, “use of force” does not limit activities of wealthy, powerful nations to physical attacks only. It includes actions which are not physical in nature or forms. i.e. to say non-use of force. For example, giving of financial aids; supply of materials, food, arms and logistics, aiding insurgents to revolt against legitimate government or aiding a legitimately constituted governments to suppress groups of people with different ideology or different system of political economy.

**IV.** That the phrase “use of force” should be properly and extensively defined to include illegal political pressure, economic pressure, diplomatic pressure, economic sanctions e.t.c., and it must not be defeated by the veto power of any state. This is because the super powers seem to be using the veto granted to them purely on political ground. Lastly it is hereby recommended that further research should undertake because the modern concept of intervention is dynamic not static other forms of illegal interventions are emerging which are not contemplated by the United Nations Charter.

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