

HISTORICAL EXAMPLES OF UNAUTHORIZED HUMANITARIAN INTERVENTION

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1. India's Intervention in East Pakistan (1971)

Facts

In December 1971, India sent troops into what was at the time known as East Pakistan. For the preceding months, Pakistani forces had been engaged in a violent conflict with a Bangladeshi separatist group.¹ The Indo-Pakistani conflict was sparked by the Bangladesh Liberation War, a conflict between the West Pakistanis and the East Pakistanis, who were mainly of Bengali ethnicity.² In the 1970 Pakistani election, the East Pakistani Awami League secured a simple majority in the Parliament of Pakistan.³ The West Pakistani leadership, however, stalled in relinquishing power.⁴ The Awami League declared the independence of East Pakistan as Bangla Desh on April 10, 1971.⁵ West Pakistani forces engaged in violent attempts to end the insurrection, committing widespread atrocities against the Bengali population of East Pakistan.⁶ Over a million Bengalis were killed.⁷ And, an estimated 8 million refugees fled to India.⁸

In December 1971, fighting broke out between India and Pakistan when India sent armed troops into East Pakistan.⁹ U.N. debates over the conflict took on a distinctly Cold War tone, stalling any action on the part of the United Nations.¹⁰ The military conflict between India and Pakistan lasted only thirteen days before Pakistani forces in East

¹ THOMAS M. FRANCK, *RECOURSE TO FORCE: STATE ACTION AGAINST THREATS AND ARMED ATTACKS* 139 (2002).

² John H. Gill, *An Atlas of the 1971 India-Pakistan War: The Creation of Bangladesh*, NEAR E. S. ASIA CTR. FOR STRATEGIC STUDIES 10-12, <http://www.ndu.edu/nesa/docs/Gill%20atlas%20final%20version.pdf> (last visited Oct. 29, 2012).

³ *Id.* at 10.

⁴ *Id.* at 10-11.

⁵ ANTONIO TANCA, *FOREIGN ARMED INTERVENTION IN INTERNAL CONFLICT* 163 (1993).

⁶ FRANCK, *supra* note 1, at 139.

⁷ NICHOLAS J. WHEELER, *SAVING STRANGERS: HUMANITARIAN INTERVENTION IN INTERNATIONAL SOCIETY* 55 (2000).

⁸ FRANCK, *supra* note 1, at 140.

⁹ TANCA, *supra* note 5, at 163.

¹⁰ The Security Council assembled on December 4, 1971 to discuss the hostilities. FRANCK, *supra* note 1, at 140. The United States proposed a resolution that called for an "immediate cessation of hostilities" and the "immediate withdrawal of armed personnel," but the USSR vetoed the resolution. *Id.* at 141. A Chinese draft resolution from December 5 called on States to support the Pakistan people, meanwhile condemning the Indian Government's acts of "subverting, dismembering and committing aggression against Pakistan." China: draft resolution, U.N. Doc. S/10421 (Dec. 5, 1971). On December 12, with Pakistan facing imminent defeat, the United States requested that the Security Council reconvene. The Council deliberated for four days, but by the time proposals were finalized, Pakistan's forces in the East had surrendered and the war had ended.

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Pakistan surrendered.¹¹ By January 4, 1972, the Secretary-General was able to report that the cease-fire between the two states “appeared relatively stable.”¹² As a result of India’s intervention, East Pakistan ultimately achieved independence and became modern-day Bangladesh.¹³

Justifications for Intervention

In justifying its unauthorized intervention, India framed the issue as mainly one of self-defense and regional security. Citing the millions of refugees flowing from East Pakistan into India, the Prime Minister of India wrote to the U.N. Secretary General that Pakistan’s actions “pose a serious threat to our security” and that the resulting military action taken against Pakistan was “entirely defensive.”¹⁴ The Indian Ambassador to the Security Council argued that Pakistan had committed a crime of “refugee aggression,” that is, its aggression came from the strain its actions placed on India’s social structure and finances.¹⁵ India also argued that it had a right to intervene in light of the humanitarian catastrophe engulfing East Pakistan. The Indian Ambassador to the U.N. claimed that India had “absolutely nothing but the purest of . . . intentions: to rescue the people of East Bengal from what they are suffering.”¹⁶ India also maintained that its authority to intervene to end the humanitarian catastrophe was based in part on the consent of Bangladeshi people, even though Bangladesh was not yet an independent state.¹⁷ In making this argument, India argued that the rule of self-determination might be applied to the Bengali people.¹⁸

¹¹ TANCA, *supra* note 5, at 163.

¹² U.N. Secretary General, *Report of the Secretary-General on the Work of the Organization*, 7, U.N. Doc. A/8701 (June 15, 1972).

¹³ Gill, *supra* note 2, at 66.

¹⁴ U.N. Secretary-General, *Report of the Secretary General*, ¶ 7, U.N. Doc. S/10410 (Dec. 3, 1971) (reporting on a letter from the Prime Minister of India to the Secretary-General dated Nov. 16, 1971).

¹⁵ WHEELER, *supra* note 7, at 61.

¹⁶ U.N. SCOR, 26th Sess., 1606th mtg. at 18, U.N. Doc. S/PV.1606 (Dec. 4, 1971). Similarly, India’s letter of November 1971 to the Secretary General referred to Pakistan as “pursu[ing] a deliberate policy of suppressing the fundamental freedom and human rights of the people in East Bengal.” U.N. Doc. S/10410, *supra* note 1414.

¹⁷ In a letter to the Secretary-General, the Indian Ambassador claimed that

International law recognizes that where a mother-State has irrevocably lost allegiance of such a large section of its people as represented by Bangla Desh and cannot bring them under its sway, conditions for the separate existence of such a state comes into being. It is India’s assessment that this is precisely what has happened in Bangla Desh. The overwhelming majority of the elected representatives of Bangla Desh have irrevocably declared themselves in favour of separation from the mother-State of Pakistan and have set up a new state of Bangla Desh. India has recognized this new State.

Rep. of India, Letter dated 12 December 1971 from the Rep. of India addressed to the Secretary-General, at 2, U.N. Doc. S/10445 (Dec. 12, 1971). India cited the authority of this new government in justifying its intervention. U.N. Secretary-General, *Rep. of the Secretary-General on the Good Offices Mission of His Special Representative for Humanitarian Problems Under Security Council Resolution 307*, at 4, U.N. Doc. S/10512 (Jan. 17, 1972) (“Indian troops remained where they were at the invitation of the Dacca authorities and would remain there only so long as their presence was requested. The Government of India had recognized Bangladesh as an independent sovereign State [I]n so far as there were humanitarian problems in the region, the Bangladesh Government was the sole authority with which to confer.”).

¹⁸ WHEELER, *supra* note 7, at 62-63.

Reactions of the International Community

In debates at the UNSC, the USSR introduced a draft resolution by which the Council would call upon the Government of Pakistan “to cease all acts of violence by Pakistan forces in East Pakistan,” thereby placing the USSR staunchly on the side of the Indians.¹⁹ At the General Assembly, the USSR further endorsed the intervention by arguing that “Pakistan had launched an attack on India in order to solve its domestic problem.”²⁰ Accordingly, “a cease-fire between India and Pakistan would only give Pakistan the right to continue its terror campaign against” the Bengali people.²¹ China, by contrast, argued that India was the “outright aggressor” and that “the Soviet Union was behind the aggression.”²² It urged the United Nations to condemn India’s aggression, support Pakistan, and call for an immediate withdrawal of Indian armed forces and personnel.²³ The United States, without publicly taking sides, introduced a draft resolution in the Security Council calling for the immediate cessation of hostilities,²⁴ but Poland and the USSR voted against it.²⁵ No Security Council resolution was ever adopted, but the Council did refer the question to the General Assembly.²⁶ Without placing blame on either Pakistan or India, the GA adopted a resolution that called for an immediate ceasefire.²⁷

2. Vietnam’s Intervention in Cambodia (1978)

Facts

The Khmer Rouge came to power in Cambodia in 1975. Soon afterwards, it began engaging in border clashes with Vietnam.²⁸ Failed negotiations,²⁹ increasing Khmer Rouge skirmishes into Vietnamese villages,³⁰ and the Khmer Rouge’s rejection of a treaty designed to confirm the existing borders³¹ led the Vietnamese government to assist opposition forces in Cambodia in their attempt to overthrow the Khmer Rouge regime.³²

¹⁹ *Rep. of the Secretary-General on the Work of the Organization*, *supra* note 12, at 71.

²⁰ *Id.* at 72.

²¹ *Id.*

²² *Id.*; *see also* China: draft resolution, *supra* note 10.

²³ U.N. Doc. S/10421, *supra* note 22.

²⁴ United States: draft resolution, U.N. Doc. S/10416 (Dec. 4, 1971).

²⁵ FRANCK, *supra* note 1, at 141.

²⁶ *See* S.C. Res. 303, U.N. Doc. S/RES/303 (Dec. 6, 1971).

²⁷ *See* G.A. Res. 2793 (XXVI), U.N. Doc. A/RES/2793 (XXVI) (Dec. 7, 1971) (“*Calls upon* the Governments of India and Pakistan to take forthwith all measures for an immediate cease-fire and withdrawal of their armed forces on the territory of the other to their own side of the India-Pakistan borders.”).

²⁸ WHEELER, *supra* note 7, at 79.

²⁹ *Id.* at 79-80.

³⁰ *Id.* at 80.

³¹ *Id.* at 80.

³² *Id.* at 81-82.

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After Vietnam failed to unseat the Khmer Rouge by fomenting internal unrest,³³ Vietnamese forces invaded Cambodia on December 25, 1978.³⁴ Vietnam did not attempt to procure Security Council approval beforehand. Indeed, despite the clear presence of Vietnamese troops in Cambodia, Vietnam Hanoi Radio claimed that all of the fighting in Cambodia was being done by the Cambodian Front for National Salvation,³⁵ whose formation the Vietnamese had announced just two days earlier.³⁶ In January 1979, Pol Pot fled the capital³⁷ and Vietnamese forces installed a new government, which called itself the People's Republic of Kampuchea (PRK).³⁸ The exiled Khmer Rouge government continued fighting the new government until the warring parties signed an international accord in 1991.³⁹ Vietnam withdrew its forces in 1989.⁴⁰

Vietnam's intervention is widely credited with ending the massive atrocities committed by Pol Pot's regime, which included over 200,000 political killings between 1975 and 1977 and a further 100,000 in 1978.⁴¹ The total number of deaths during the Khmer Rouge period from starvation, executions, and forced labor is estimated at over 1.7 million.⁴²

Justifications for Intervention

In justifying its intervention, Vietnam attempted to claim that “two wars” were taking place: “one, the border war started by the Pol Pot-Ieng Sary clique against Viet Nam . . . the other, the revolutionary war of the Kampuchean people,”⁴³ even though Vietnamese troops were, in fact, directly involved in this second war. Vietnam framed its own use of force as an exercise of the “sacred right of self-defence of peoples in the face of aggression.”⁴⁴ To lend greater support to its claim that it was only supporting an internal uprising against Pol Pot, Vietnam cited the suffering of Cambodian people, claiming that the regime had “stripped the people of Kampuchea of all their rights, pursued inhumane policies and turned that happy people into slaves and the entire country into an immense concentration camp.”⁴⁵

³³ *Id.* at 82 (citing GRANT EVANS & KELVIN ROWLEY, *RED BROTHERHOOD AT WAR: VIETNAM, CAMBODIA AND LAOS SINCE 1975*, at 108 (1990)).

³⁴ FRANCK, *supra* note 1, at 146.

³⁵ WHEELER, *supra* note 7, at 84.

³⁶ *Id.* at 84.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Alan Riding, *4 Parties in Cambodian War Sign U.N.-Backed Peace Pact; Khmer Rouge Shares Rule*, N.Y. TIMES, Oct. 24, 1991, <http://www.nytimes.com/1991/10/24/world/4-parties-in-cambodian-war-sign-un-backed-peace-pact-khmer-rouge-shares-rule.html?pagewanted=all&src=pm>.

⁴⁰ Uli Schmetzer, *Vietnamese Troops Leave a Weary, Wary Cambodia*, CHI. TRIB., Sept. 22, 1989, http://articles.chicagotribune.com/1989-09-22/news/8901150240_1_cambodian-vietnamese-angkor-wat.

⁴¹ WHEELER, *supra* note 7, at 78 (citing EVANS & ROWLEY, *supra* note 33, at 99).

⁴² *The Cambodian Genocide Program*, YALE UNIV., <http://www.yale.edu/cgp/> (last visited Dec. 2, 2012).

⁴³ U.N. SCOR, 34th Sess., 2108th mtg., ¶ 115, U.N. Doc. S/PV.2108 (Jan. 11, 1979).

⁴⁴ *Id.* ¶ 127.

⁴⁵ *Id.* ¶ 130; *see also* WHEELER, *supra* note 7, at 88-89 (claiming Vietnam appealed to “‘humanitarian norms’ . . . to lend credibility to the two-wars justification”). Vietnam also referred to Cambodia under the Khmer Rouge as a “living hell.” U.N. SCOR, 2108th mtg., *supra* note 43, ¶ 131.

Reactions of the International Community

The Security Council voted on a draft resolution introduced by the seven non-aligned members. The resolution only indirectly condemned the Vietnamese invasion, reaffirming that the “preservation of [the] sovereignty[,] territorial integrity[,] and political independence of every State is a fundamental right” and calling for “all foreign forces . . . to withdraw.”⁴⁶ It passed 13 to 2 (Soviet Union and Czechoslovakia opposing).⁴⁷ However, the Soviet Union (which supported Vietnam) vetoed the resolution.⁴⁸ Almost all the statements made by the international community of the intervention were negative in nature.⁴⁹ Only East Germany⁵⁰ and the USSR⁵¹ endorsed the intervention.

3. Tanzania’s Intervention in Uganda (1978-1979)

Facts

In 1979, Tanzania intervened in Uganda, which led to the overthrow of the “barbaric regime” of Idi Amin.⁵² After Amin came to power in a military coup in 1971, Tanzanian President Julius Nyerere began working to undermine the regime. For example, he provided asylum for the deposed Ugandan leader Milton Obote and his supporters (among them Ugandan soldiers).⁵³

⁴⁶ Bangladesh, Bolivia, Gabon, Kuwait, Nigeria and Zambia: Draft resolution, ¶¶ 1-2, U.N. Doc. S/13027 (Jan. 15, 1979).

⁴⁷ WHEELER, *supra* note 7, at 96.

⁴⁸ *Id.*

⁴⁹ For example, China sponsored a resolution condemning Vietnam's “aggression” and calling for the withdrawal of Vietnamese forces from Cambodia. *Id.* at 90. Australia gave its “full support to Democratic Kampuchea’s right to independence, sovereignty and territorial integrity. Like other Governments, we cannot accept that the internal policies of any Government, no matter how reprehensible, can justify a military attack upon it by another Government.” U.N. SCOR, 34th Sess., 2111st mtg., ¶ 25, U.N. Doc. S/PV.2111 (Jan. 15, 1979). The United Kingdom held that “[w]hatever is said about human rights in Kampuchea, it cannot excuse Viet Nam, whose own human rights record is deplorable, for violating the territorial integrity of Democratic Kampuchea.” U.N. SCOR, 34th Sess., 2110th mtg., ¶ 65, U.N. Doc. S/PV.2110 (Jan. 13, 1979); *see also* WHEELER, *supra* note 7, at 93-95 (discussing the negative statements of France, Portugal, New Zealand, and Norway).

⁵⁰ East Germany held that Vietnam’s intervention should be “welcomed and supported by all those who earlier spared no words to complain about the massive violations of human rights . . .” U.N. SCOR, 34th Sess., 2109th mtg., ¶ 68. U.N. Doc. S/PV.2109 (Jan. 12, 1979). It added that how a state responded “is indeed a touchstone of one’s seriousness about the struggle against massive violations of human rights.” *Id.*

⁵¹ WHEELER, *supra* note 7, at 96. Its representative affirmed Vietnam’s claim that the National Salvation Front, as the “genuine expression of the Kampuchean people,” was responsible for the overthrow of Pol Pot. The USSR also emphasized the “monstrous crimes” committed by the Khmer Rouge regime. *Id.*

⁵² *See id.* at 111.

⁵³ *Id.* at 112; Farooq Hassan, *Realpolitik in International Law: After Tanzania-Ugandan Conflict “Humanitarian Intervention” Reexamined*, 17 WILLAMETTE L. REV. 859, 867-68 (1981). Over the years that followed, Nyerere was often critical of the Amin regime and its record of human rights abuse. He expressed his frustration that while African leaders readily criticized the abuses of colonial governments, African leaders (and the Organization of African Unity (OAU)) refused to criticize “state-organized brutality” when perpetrated by the leader of an independent African state. *See* WHEELER, *supra* note 7, at 113 (quoting one of Nyerere’s ministers in 1975); *see also id.* at 115-16 (quoting a statement Nyerere

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In October of 1978, the Ugandan army crossed the Tanzanian bordered and occupied 710 square miles of Tanzanian territory, killing Tanzanians and pillaging towns in the process.⁵⁴ Uganda relied on an entitlement based on colonial-era boundaries to justify the invasion, a pretext that scholars have widely dismissed as spurious.⁵⁵ In response, Nyerere mobilized the Tanzania army along the Ugandan border.⁵⁶ Efforts by the Organization of African Unity and representatives of some African states to mediate the conflict failed, which some scholars suggest was due to Nyerere's determination to see Amin overthrown.⁵⁷ Akin to Vietnam's claim of a "two-front" conflict, Nyerere intended only to have Tanzanian soldiers engaged in the south of Uganda along the border, while exiled Ugandan political groups and soldiers led the charge against the capital (or, at least, Nyerere intended to publically claim that this division of labor existed).⁵⁸

Exiled Ugandan forces and rebels (known as the Ugandan National Liberation Front) and Tanzania forces crossed into Uganda in January 1979.⁵⁹ Eventually, Nyerere was forced to forgo his plan of leaving the bulk of the northern fighting to the exiled Uganda forces, particularly when Libyan soldiers intervened in support of the Amin regime.⁶⁰ By April, the Amin regime fell to Tanzanian and exiled Ugandan soldiers⁶¹ and a new government was established, comprised of formerly exiled leaders.⁶²

Justifications for Intervention

In the lead up to the conflict, in addition to condemning Uganda's "aggression" against Tanzania, Nyerere expressed frustration with the failure of African states to criticize Amin's human rights abuses in Uganda, and even called for a change in the OAU Charter regime such that the Charter's protections would not extend to leaders who perpetrated massive human rights abuses against their own citizens.⁶³ But despite this earlier call, at a 1979 OAU summit on the crisis, Nyerere did not rely on the justification

issued shortly before the intervention, which criticized "[a] strange tendency in Africa[,] . . . a tendency which, if we do not consider it carefully, will badly damage respect for our continent . . . Amin is a killer. Since he took over the leadership of Uganda—and I am not sure whether I should call it leadership or oppression—he has killed many more people than [various colonial rulers had]. But there is a strange habit in Africa: an African leader, so long as he is an African, can kill Africans just as he pleases, and you cannot say anything").

⁵⁴ See WHEELER, *supra* note 7, at 113; Hassan, *supra* note 53, at 865, 871-72.

⁵⁵ WHEELER, *supra* note 7, at 113 (arguing that the invasion was actually the result of an effort by Amin to distract attention from the "erosion of his power base at home" and mutiny by various Ugandan soldiers).

⁵⁶ *Id.* at 114.

⁵⁷ *Id.* at 114-115.

⁵⁸ *Id.* at 116, 118-119; see also Hassan, *supra* note 53, at 874 ("Tanzania had carefully devised the argument that Tanzanian forces had not directly intervened to topple Amin's government, but that exiles were the invading force."). Wheeler also notes that Tanzania facilitated a meeting of exiled Ugandan political leaders. WHEELER, *supra* note 7, at 116.

⁵⁹ SEAN D. MURPHY, HUMANITARIAN INTERVENTION: THE UNITED NATIONS IN AN EVOLVING WORLD ORDER 105 (1996).

⁶⁰ WHEELER, *supra* note 7, at 119-120.

⁶¹ *Id.* at 120.

⁶² Hassan, *supra* note 53, at 876-77 (discussing the "election" process completed in exile).

⁶³ WHEELER, *supra* note 7, at 114-16.

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of humanitarian intervention; instead, he circulated a statement referred to as the “Blue Book” relying on a justification grounded in self-defence.⁶⁴ Nyerere did, however, use the Blue Book as an opportunity to document the many abuses of the Amin regime.⁶⁵ In contrast, at the Summit, the new President of Uganda, Godfrey Binaisa, articulated his support for humanitarian intervention as one justification for the Tanzania’s conduct, among many. He described the intervention, which ended Amin’s abusive reign, as consistent with the OAU Charter’s aims of “enhanc[ing] the freedom and dignity of the sons and daughters of Africa.”⁶⁶

Reactions of the International Community

The intervention into Uganda was not considered by the Security Council or the General Assembly.⁶⁷ When Amin’s initial request in February for a meeting of the Security Council on the issues was dismissed as improperly worded,⁶⁸ he appealed again for a meeting in March,⁶⁹ but retracted that appeal a few days later at the request of African states.⁷⁰

Although the international community’s reaction was “cautious[,]” the Soviet Union supported Tanzania’s defensive claim “and denounced Amin for ‘causing thousands of people to disappear.’”⁷¹ Similarly, Zambia, without endorsing the intervention itself, described the defeat of Amin as a “triumph for freedom, justice and human dignity.”⁷² Western states did not offer support or “direct comment” on Tanzania’s intervention. However, they were quick to recognize the new government of Uganda. In fact, the new government comprised of formerly exiled leaders was promptly recognized by various states, including the U.S.A., the U.K., China and many African

⁶⁴ *Id.* at 126-27 (quoting from the Blue Book as stating: “The war between Tanzania and Idi Amin’s regime in Uganda was caused by the Ugandan army’s aggression against Tanzania and Idi Amin’s claim to have annexed part of Tanzanian territory. There was no other cause for it”). *But see* Hassan, *supra* note 53, at 866 (relying on a statement by Nyerere in an April 1979 *New York Times* article for the proposition that “Tanzanian authorities, however, have insisted steadfastly that their behavior was justified on international humanitarian grounds”).

⁶⁵ WHEELER, *supra* note 7, at 126.

⁶⁶ *Id.* at 129.

⁶⁷ *See* Ramses Amer, *The United Nations' Reactions to Foreign Military Interventions*, 31 J. PEACE RES. 425, 431 (1994) (observing that neither the General Assembly nor the Security Council considered the intervention). Wheeler suggests that a significant factor in muting the international response was the fact that conflict did not engage any Cold War rivalry. *See* WHEELER, *supra* note 7, at 123.

⁶⁸ WHEELER, *supra* note 7, at 122.

⁶⁹ Deputy Permanent Rep. of Uganda to the U.N., Letter dated Mar. 28, 1979 from Deputy Permanent Rep. of Uganda to the United Nations addressed to the President of the Security Council, U.N. Doc. S/13204 (Mar. 28, 1979).

⁷⁰ *See* Deputy Permanent Rep. of Uganda to the U.N., Letter dated Apr. 5, 1979 from the Deputy Permanent Rep. of Uganda to the United Nations addressed to the President of the Security Council, U.N. Doc. S/13228 (Apr. 6, 1979); Hassan, *supra* note 53, at 866 n.19.

⁷¹ WHEELER, *supra* note 7, at 123.

⁷² *Id.* at 125 (citing John Darnton, *Invaders Establish Control in Kampala and Call on All Ugandans to Hunt Amin*, N.Y. TIMES, Apr. 13, 1979, at A3).

states (including nearby Zambia, Angola, Botswana and Mozambique).⁷³ By the end of 1980, the new government had been recognized by more than 60 states.⁷⁴

At the 1979 OAU Summit, while the outgoing OAU Chairman and Nigeria criticized the intervention, other African states did not offer any public condemnation.⁷⁵ A strongly worded debate between the Chairman, Nigeria, and Nyerere did lead the OAU to engage in a closed-door session on the matter, from which no record or resolution emerged.⁷⁶

4. France's Intervention in the Central African Republic (1979)

Facts

France intervened in the Central African Republic in 1979, leading to the fall of Jean-Bedel Bokassa, who had been the head of state.⁷⁷ Bokassa's fourteen years in power were marked by atrocities, which became especially acute when resistance to his power began in 1979.⁷⁸ In January 1979, schoolchildren demonstrating in the capital were bloodily repressed.⁷⁹ And in April 1979, Bokassa's forces detained hundreds of students and young people suspected of opposing the regime, at least one hundred of whom were beaten to death in the presence of—and probably with the participation of—Bokassa himself.⁸⁰ In response to an Amnesty report detailing these atrocities,⁸¹ the Sixth Franco-African conference dispatched a Commission of Inquiry composed of judges from five African states to investigate.⁸² The Commission's report was made public in August 1979, confirming that the atrocities had taken place and stating that Bokassa had “almost certainly” taken part in them.⁸³ In response, France cut off financial aid to the country.⁸⁴

On the night of September 20, 1979, while Bokassa was on a state visit in Libya, the French launched Operation Barracuda.⁸⁵ French military secured the airport and other locations in the capital.⁸⁶ They then flew former president, personal adviser, and cousin David Dacko to retake power, which occurred in a bloodless coup.⁸⁷ Bokassa went into

⁷³ *Id.* at 123-25. Burrows suggests that the promptness of these recognitions, some of which took place before Tanzania military operations were even completed, could be viewed as tacit acceptance of the intervention by the international community. Noreen Burrows, *Tanzania's Intervention in Uganda: Some Legal Aspects*, 35 THE WORLD TODAY 306, 309 (1979).

⁷⁴ WHEELER, *supra* note 7, at 125.

⁷⁵ *Id.* at 125-27.

⁷⁶ *Id.* at 130.

⁷⁷ SIMON CHESTERMAN, JUST WAR OR JUST PEACE? 81 (2002).

⁷⁸ *Id.* at 82.

⁷⁹ *Central African Republic: Anatomy of a Phantom State*, INTERNATIONAL CRISIS GROUP, at 6 (Dec. 13, 2007).

⁸⁰ MURPHY, *supra* note 59, at 107.

⁸¹ JONATHAN POWER, LIKE WATER ON STONE: THE STORY OF AMNESTY INTERNATIONAL 77-8 (2001).

⁸² CHESTERMAN, *supra* note 77, at 82; FERNANDO R. TESÓN, HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY 196 (2d ed. 1997).

⁸³ CHESTERMAN, *supra* note 77, at 82.

⁸⁴ *Id.*

⁸⁵ Christopher William Griffin, *French Grand Strategy in African in the Fifth Republic*, INT'L STUDIES ASSOC. 225 (2009).

⁸⁶ *Id.*

⁸⁷ CHESTERMAN, *supra* note 77, at 82.

exile in Côte d'Ivoire.⁸⁸ There is some evidence pointed to by scholars that Operation Barracuda had been planned in July of 1979, before the Amnesty report had been released.⁸⁹

Justifications for Intervention

France originally claimed that it only intervened after Dacko's coup, at the request of the new regime.⁹⁰ But later reports exposed the fact that French troops were present in the CAR on the night of the coup.⁹¹ The French Foreign Ministry continued to claim that it had not installed Dacko but acknowledged, several days later, that it had promised French aid to Dacko if he were to depose Bokassa.⁹²

Some scholars also attribute an explicit humanitarian motivation to the French intervention. In the summer of 1979 Amnesty International released a report detailing a massacre of schoolchildren authorized by Emperor Bokassa. In reaction to the report, France criticized and cut off aid to the regime.⁹³ This act has led some commentators to attribute humanitarian motivation to the intervention, which occurred several weeks later.⁹⁴ But others dispute this claim, pointing out that France had already begun planning the intervention before the release of the Amnesty International report.⁹⁵

Reactions of the International Community

The Security Council and the General Assembly never considered the intervention, and neither passed any resolutions on the intervention.⁹⁶ Only Libya, Benin, and Chad apparently condemned the intervention.⁹⁷

5. ECOWAS's Intervention in Liberia (1990)

Facts

⁸⁸ Griffin, *supra* note 85, at 225.

⁸⁹ CHESTERMAN, *supra* note 77, at 82.

⁹⁰ See FRANCK, *supra* note 1, at 151; *Nov 1979 - Overthrow of Emperor Bokassa by Mr Dacko - Re-establishment of Republic - French Role in Coup*, KEESING'S RECORD OF WORLD EVENTS (1979), <http://www.keesings.com> (accessed by searching "Search the Archive" for "Bokassa" and by following the hyperlink named "Overthrow of Emperor Bokassa by Mr. Dacko . . .") (last visited Dec. 2, 2012).

⁹¹ FRANCK, *supra* note 1, at 151-52 (citing to *Le Monde* and *New York Times* reports).

⁹² *Id.* at 152.

⁹³ *Nov 1979 - Overthrow of Emperor Bokassa by Mr Dacko - Re-establishment of Republic - French Role in Coup*, KEESING'S RECORD OF WORLD EVENTS (1979), <http://www.keesings.com> (accessed by searching "Search the Archive" for "Bokassa" and by following the hyperlink named "Overthrow of Emperor Bokassa by Mr. Dacko . . .") (last visited Dec. 2, 2012).

⁹⁴ TESÓN, *supra* note 82, at 198.

⁹⁵ See CHESTERMAN, *supra* note 77, at 82 (citing Charles Rousseau, *Chronique des faits Internationaux*, 83 REVUE GÉNÉRALE DE DROIT INTERNATIONAL PUBLIC 351, 365 (1980)).

⁹⁶ FRANCK, *supra* note 7, at 152; MURPHY, *supra* note 59, at 108.

⁹⁷ FRANCK, *supra* note 7, at 152 (citing three 1979 *Le Monde* articles); TESÓN, *supra* note 82, at 198 (citing Rousseau, *supra* note 95).

Consent-Based Humanitarian Intervention

In 1990, the Economic Community of West African States (ECOWAS)—a West African regional organization⁹⁸—created a special ECOWAS Cease-Fire Monitoring Group (ECOMOG), consisting of the armed forces of several member-states, and dispatched it to intervene in a bloody civil war taking place in Liberia, an ECOWAS member-state. The civil war, initiated in 1989, pitted the government of Samuel Doe and his Armed Forces of Liberia against the rebel National Patriotic Front of Liberia, led by Charles Taylor.⁹⁹ Both sides were widely accused of committing atrocities including massacres, torture, and displacement of civilians.¹⁰⁰

Created under the auspices of a special ECOWAS Standing Mediation Committee, the ECOMOG force was designed primarily “for the purpose of keeping the peace, [and] restoring law and order.”¹⁰¹ The Committee, and ECOWAS as a whole, did not secure Security Council approval before creating and dispatching ECOMOG.¹⁰² The proposed intervention was controversial among ECOWAS member-states due in part to the fact that almost all of the countries that contributed troops to ECOMOG were anglophone states.¹⁰³ The disproportionate influence of Nigeria in both establishing and staffing ECOMOG was also a source of contention due to Nigeria’s close ties with the Doe regime.¹⁰⁴ Despite these concerns, ECOMOG was dispatched in August of 1990. During its early years, the force suffered from operational difficulties and competing interests among member states (many of whom tacitly supported specific parties in the conflict). Taylor was especially hostile to the force, and his army often clashed with ECOMOG troops.¹⁰⁵ But despite these challenges, ECOMOG remained active in Liberia for several years, helping broker various temporary cease-fires, and ultimately helping implement a final cease-fire and supervise elections that formally brought Taylor to power in 1997.¹⁰⁶

Justifications for Intervention

⁹⁸ ECOWAS was originally designed to help integrate the economies of member-states, with the ultimate goal of establishing an economic and monetary union. In 1993, ECOWAS revised its founding treaty and took more steps towards political, as well as economic, integration. *See* reaty Establishing the Economic Community of West African States, July 24, 1993, 35 I.L.M. 660 [hereinafter ECOWAS Treaty] (replacing the 1975 Treaty of Lagos), *available at* <http://www.comm.ecowas.int/sec/index.php?id=treaty&lang=en>. This eventually included the establishment of a regional Parliament, a court of justice, and various other organs. *See* Profile: Economic Community of West African States (ECOWAS) [hereinafter ECOWAS Profile], *available at* <http://www.africa-union.org/root/au/recs/ECOWASProfile.pdf>.

⁹⁹ ERIC G. BERMAN & KATIE E. SAMS, *PEACEKEEPING IN AFRICA: CAPABILITIES AND CULPABILITIES* 84 (2000).

¹⁰⁰ David Wippman, *Enforcing the Peace: ECOWAS and the Liberian Civil War*, in *ENFORCING RESTRAINT: COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS* 157, 157-58 (Lori Fisler Damrosch ed., 1993); *see* Eleanor Lumsden, *An Uneasy Peace: Multilateral Military Intervention in Civil Wars*, 35 N.Y.U. J. INT’L L. & POL. 795, 816 (2003).

¹⁰¹ Wippman, *supra* note 100, at 167 (quoting the Final Communique of the First Session of the Community Standing Mediation Committee, ECOWAS (Aug. 7, 1990)).

¹⁰² Some claim this was due to opposition from the Côte d’Ivoire, as well as Ethiopia and Zaire—members of the Security Council at the time—to Security Council involvement. Wippman, *supra* note 100, at 165.

¹⁰³ BERMAN & SAMS, *supra* note 99, at 86-91.

¹⁰⁴ *Id.* at 83-85, 90-91.

¹⁰⁵ *Id.* at 92; Wippman, *supra* note 100, at 158.

¹⁰⁶ BERMAN & SAMS, *supra* note 99, at 109.

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ECOMOG was framed as a peacekeeping force, despite the fact that it intervened while hostilities were still ongoing.¹⁰⁷ The ECOWAS Standing Mediation Committee claimed it had the “responsibility of ensuring that peace and stability is maintained in the subregion” and that this justified the intervention.¹⁰⁸ The Standing Mediation Committee also emphasized the humanitarian catastrophe engulfing Liberia. For example, in a communiqué, the Committee stated that “[t]he failure of the warring parties to cease hostilities has led to the massive destruction of property and the massacre by all the parties of thousands of innocent civilians, including foreign nationals, women and children.”¹⁰⁹ Finally, the Standing Mediation Committee claimed that ECOMOG was operating under the authority of ECOWAS’s 1981 Mutual Assistance on Defense Protocol, an addition to the original ECOWAS treaty designed to coordinate collective self-defense among ECOWAS member-states; however, scholars have questioned ECOWAS’s authority, under the organization’s governing treaty law, to intervene in an internal conflict of a member-state.¹¹⁰

Some have claimed that ECOMOG was dispatched based on a formal request for aid by the Doe government. Indeed, Doe, in May 1990, wrote a letter to the Standing Mediation Committee stating that “it would seem most expedient at this time to introduce an ECOWAS Peace-keeping Force into Liberia to forestall increasing terror and tension and to assure a peaceful transitional environment.”¹¹¹ But Doe’s authority to request any intervention was tenuous by May 1990.¹¹² And Taylor—arguably the de facto leader of Liberia by then—never consented to the intervention. Rather, he called it a “flagrant act of aggression”¹¹³ and frequently ordered his forces to attack ECOMOG troops during the early years of the intervention.¹¹⁴

Reactions of the International Community

The Security Council remained silent on the intervention and on the Liberian civil war in general until 1991, when the President of the Council “commended” ECOWAS’s

¹⁰⁷ Wippman, *supra* note 100, at 177-78.

¹⁰⁸ *Id.* at 176 (quoting paragraphs 6 through 9 of the Final Communiqué of the First Joint Summit Meeting of the ECOWAS Standing Mediation Committee and the Committee of Five).

¹⁰⁹ *Id.*

¹¹⁰ ECOWAS Protocol Relating to Mutual Assistance on Defence (PMAD), May 29, 1981, *available at* http://www.iss.co.za/af/regorg/unity_to_union/pdfs/ecowas/13ProtMutualDefAss.pdf. However, the Protocol was designed to deal primarily with conflicts between states, rather than purely internal conflicts, and it is unclear if it truly applied to the situation in Liberia. Scholars generally agree that the Standing Mediation Committee did not have the right to invoke the Protocol unilaterally absent a more formal determination by the official ECOWAS governing Authority. *See, e.g.*, BERMAN & SAMS, *supra* note 99, at 86-87; Jeremy Levitt, *Humanitarian Intervention by Regional Actors in Internal Conflicts: The Cases of ECOWAS in Liberia and Sierra Leone*, 12 *TEMPLE INT’L & COMP. L.J.* 333, 346-47 (1998); Wippman, *supra* note 100, at 168.

¹¹¹ Letter addressed by President Samuel K. Doe to the Chairman and Members of the Ministerial Meeting of the ECOWAS Standing Mediation Committee (July 14, 1990), *reprinted in* REGIONAL PEACE-KEEPING AND INTERNATIONAL ENFORCEMENT: THE LIBERIAN CRISIS 60, 61 (M. Weller ed., 1994).

¹¹² BERMAN & SAMS, *supra* note 99, at 87.

¹¹³ *Report: Banjul Talks Begin; ECOMOG Again Delayed; Taylor Warns He Will Fight*, BBC, Aug. 23, 1990, *reprinted in* REGIONAL PEACE-KEEPING AND INTERNATIONAL ENFORCEMENT, *supra* note 111, at 86.

¹¹⁴ BERMAN & SAMS, *supra* note 99, at 93, 97-98; Wippman, *supra* note 100, at 168.

work in the region and encouraged Liberian forces to abide by a recent cease-fire agreement.¹¹⁵ The Security Council did not pass an official resolution on the conflict until November 1992. Resolution 788 instituted an embargo on the delivery of any weapons bound for Liberia, but granted an exception to weapons bound for ECOMOG.¹¹⁶ The Resolution also “commend[ed] ECOWAS for its efforts to restore peace, security and stability in Liberia.”¹¹⁷ The Council later passed Resolution 866 creating the United Nations Observer Mission in Liberia (UNOMIL).¹¹⁸ The Council stated that “this would be the first peace-keeping mission undertaken by the United Nations in cooperation with a peace-keeping mission already set up by another organization, in this case ECOWAS.”¹¹⁹

The United States remained silent about the intervention, viewing it as an internal African issue,¹²⁰ but gradually began increasing its support—including convincing Senegal to join the force—over the next several years.¹²¹ Some members of ECOWAS opposed the intervention. For example, the President of Burkina Faso, a supporter of Taylor, declared that the Standing Committee has “no competence to interfere in member states’ internal conflicts” without all parties’ consent.¹²² During the later stages of the intervention, many additional African states decided to contribute troops to ECOMOG.¹²³

6. The U.S., the U.K., the Netherlands, France & Nine Other Countries’ Intervention in Iraq (1991)

Facts

In 1991, in the immediate aftermath of the first Gulf War, the United States, the United Kingdom, France, the Netherlands, and nine other countries dispatched 8,000 troops to Northern Iraq to provide assistance to Kurdish refugees. This intervention, dubbed “Operation Provide Comfort,” was the result of a long string of events.

Iraq’s Kurdish population in the north and its Shiite population in the south had rebelled against the Iraqi government in March 1991, immediately following the conclusion of the first Gulf War.¹²⁴ Saddam Hussein’s regime responded with brutal

¹¹⁵ U.N. President of the S.C., Note by the President of the Security Council, U.N. Doc. S/22133 (Jan. 22, 1991). The Council issued a similar statement almost a year and a half later. See U.N. President of the S.C., Note by the President of the Security Council, U.N. Doc. S/23886 (May 7, 1992).

¹¹⁶ S.C. Res. 788, ¶¶ 9-10, U.N. Doc. S/RES/788 (Nov. 19, 1992).

¹¹⁷ *Id.* ¶ 1.

¹¹⁸ S.C. Res. 866, U.N. Doc. S/RES/866 (Sept. 22, 1993).

¹¹⁹ *Id.*

¹²⁰ Statement of Hon. Herman J. Cohen, Assistant Secretary of State, Bureau of African Affairs, *reprinted in* REGIONAL PEACE-KEEPING AND INTERNATIONAL ENFORCEMENT, *supra* note 111, at 46.

¹²¹ BERMAN & SAMS, *supra* note 99, at 98-100.

¹²² Wippman, *supra* note 100, at 168.

¹²³ Eleanor Lumsden, *An Uneasy Peace: Multilateral Military Intervention in Civil Wars*, 35 N.Y.U. J. INT’L L. & POL. 795, 819 (2003).

¹²⁴ Lawrence Freedman & David Boren, ‘Safe Havens’ for Kurds in Post-War Iraq, in TO LOOSE THE BANDS OF WICKEDNESS: INTERNATIONAL INTERVENTION IN DEFENCE OF HUMAN RIGHTS 43, 45 (Nigel S. Rodley ed. 1992).

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force, committing atrocities against the rebel forces and civilians in the regions.¹²⁵ By the beginning of April, the government forces had reestablished control over the country.¹²⁶ By April 6, the United Nations High Commission for Refugees estimated that roughly 750,000 Kurds had fled to Iran, 280,000 to Turkey, and that 300,000 more were gathered at the Turkish border.¹²⁷ Many of the internally displaced persons gathered in the mountains near Turkey and Iran and soon began dying in large numbers from cold and hunger.¹²⁸

On April 5, the Security Council adopted Resolution 688,¹²⁹ which “condemn[ed] the repression of the Iraqi civilian population in many parts of Iraq, including . . . in Kurdish-populated areas,” and encouraged alleviation of the refugee crisis.¹³⁰ But the resolution did not authorize international intervention under Chapter VII.

After attempts to provide assistance to the Kurdish refugees via air drops,¹³¹ a summit meeting of the European Community endorsed the British Prime Minister’s proposal to create U.N.-protected Kurdish enclaves in northern Iraq.¹³² A group of states ultimately decided to implement the plan without explicit U.N. approval, and Operation Provide Comfort soon commenced. Over 8,000 forces from the U.S., U.K., France, and the Netherlands entered northern Iraq and established six zones where Kurds could come to receive humanitarian assistance.¹³³ At the peak of the intervention, there were 20,000 troops in Northern Iraq from thirteen countries.¹³⁴

On April 18, Iraq agreed to a Memorandum of Understanding with the United Nations that provided for the establishment of 100 U.N.-administered humanitarian centers throughout Iraq.¹³⁵ The last coalition forces left Iraq on July 15, 1991,¹³⁶ but in response to escalating harassment of the Shiite population, coalition forces imposed a no-fly zone in the south on August 26, 1992.¹³⁷

Justifications for Intervention

Despite the fact that Resolution 688 did not authorize intervention under Chapter VII, both the United States and the United Kingdom argued that the Operation Provide

¹²⁵ See HUMAN RIGHTS WATCH, *ENDLESS TORMENT: THE 1991 UPRISING IN IRAQ AND ITS AFTERMATH* (1992), <http://www.hrw.org/legacy/reports/1992/Iraq926.htm>.

¹²⁶ See Freedman & Boren, *supra* note 124, at 48.

¹²⁷ *Chronology for Kurds in Iraq, 2004*, MINORITIES AT RISK PROJECT, <http://www.cidcm.umd.edu/mar/chronology.asp?groupId=64504> (last updated July 16, 2010).

¹²⁸ WHEELER, *supra* note 7, at 141; Freedman & Boren, *supra* note 124, at 48.

¹²⁹ S.C. Res. 688, ¶ 1, U.N. Doc. S/RES/688 (Apr. 5, 1991).

¹³⁰ *Id.* ¶ 1.

¹³¹ Freedman & Boren, *supra* note 124, at 50-51.

¹³² *Id.* at 52-53.

¹³³ *Id.* at 56-57.

¹³⁴ MURPHY, *supra* note 59, at 174.

¹³⁵ U.N. Secretary-General, Letter dated May 30, 1991 from the U.N. Secretary-General addressed to the President of the Security Council (Memorandum of Understanding enclosed), U.N. Doc. S/22663 (May 31, 1991); WHEELER, *supra* note 7, at 155; Freedman & Boren, *supra* note 124, at 60.

¹³⁶ CHESTERMAN, *supra* note 77, at 199.

¹³⁷ WHEELER, *supra* note 7, at 162.

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Comfort was consistent with the Resolution.¹³⁸ The United Kingdom later retreated from this claim, but argued that the intervention was justified under the “customary international law principle of humanitarian intervention.”¹³⁹ While France never explicitly cited customary international law, it did proclaim that it had a “duty of intervention” to assist the Kurds.¹⁴⁰ Similarly, the United States emphasized the humanitarian imperative of intervention,¹⁴¹ even going so far as to claim that the humanitarian crisis necessitated the rethinking of basic ideas of the inviolability of state sovereignty.¹⁴²

Reactions of the International Community

No U.N. resolutions made mention of the coalition’s intervention in Iraq. On April 18, 1991, the Secretary-General said that deployment of foreign troops posed political problems, but “from the moral and humanitarian point of view” there was “no difficulty.”¹⁴³ The G7, in its London Economic Summit Political Declaration on Strengthening the International Order, endorsed the intervention, arguing that “the urgent and overwhelming nature of the humanitarian problem in Iraq caused by violent oppression by the Government required exceptional action by the international community, following UNSCR . . . 688.”¹⁴⁴ Indeed, it went on to “urge the UN and its affiliated agencies to be ready to consider similar action in the future if the circumstances require it.”¹⁴⁵ As the United Nations took over administration of the safe havens in July 1991, it is unclear whether the G7 was expressing support for the unauthorized intervention by Britain, the United States, and France, or only for the UN-administered

¹³⁸ On April 16, 1991, President Bush stated: “Consistent with United Nations Security Council Resolution 688 . . . I have directed the U.S. military to begin immediately to establish several encampments in northern Iraq where relief supplies for these refugees will be made available in large quantities and distributed in an orderly way.” Remarks on Assistance for Iraqi Refugees and a News Conference, Apr. 16, 1991, AM. PRESIDENCY PROJECT, [hereinafter Bush Remarks on Assistance for Iraqi Refugees], <http://www.presidency.ucsb.edu/ws/index.php?pid=19479>. Similarly, on April 10, 1991, British official Douglas Hogg stated that England had “the authority of the U.N. in the last resolution [Resolution 688] . . . to ensure the safety of the Kurds” using military intervention. WHEELER, *supra* note 7, at 152 (quoting Martin Fletcher & David Watts, *Major’s Enclave Plan for Kurds Runs into Trouble*, THE TIMES, Apr. 10, 1991).

¹³⁹ WHEELER, *supra* note 7, at 167 (citing Anthony Aust, Legal Counsellor, FCO, *Statement before the House of Commons Foreign Affairs Committee*, Dec. 2, 1992, 63 BRIT. Y.B. INT’L L. 827 (1992) (“Resolution 688 recognized that there was a severe human rights and humanitarian situation in Iraq and, in particular, northern Iraq; but the intervention in northern Iraq ‘Provide Comfort’ was in fact not specifically mandated by the United Nations, but the states taking action in northern Iraq did so in exercise of the customary international law principle of humanitarian intervention.”)).

¹⁴⁰ *Id.* at 142.

¹⁴¹ Bush Remarks on Assistance for Iraqi Refugees, *supra* note 138 (“Some might argue that this is an intervention into the internal affairs of Iraq, but I think the humanitarian concern, the refugee concern is so overwhelming that there will be a lot of understanding about this.”).

¹⁴² Freedman & Boren, *supra* note 124, at 82 (quoting Thomas Pickering, Ambassador to United Nations, Speech to U.S. Council on Foreign Relations (May 8, 1991)) (“The response to the plight of the Kurds suggests a shift in world opinion towards a re-balancing of the claims of sovereignty and those of extreme humanitarian need.”).

¹⁴³ *Id.* at 59.

¹⁴⁴ *Political Declaration: Strengthening the International Order*, G8 INFORMATION CTR., para. 4 (July 16, 1991), <http://www.g8.utoronto.ca/summit/1991london/political.html>.

¹⁴⁵ *Id.*

effort to protect refugees in Iraq. The intervention was never debated in the UN, although Iraq and Sudan explicitly criticized it.

7. ECOWAS's Intervention in Sierra Leone (1997-1999)

Facts

Civil war erupted in Sierra Leone in March 1991 when the Revolutionary United Front (RUF) began fighting to overthrow the Sierra Leonean government.¹⁴⁶ In May 1997, the RUF overthrew the democratically elected President Ahmad Tejan Kabbah¹⁴⁷ and forced him into exile in Guinea.¹⁴⁸ The day of the coup, Kabbah reportedly invited Nigeria to take military action to restore his rule.¹⁴⁹ Nigeria had kept troops in Sierra Leone since the early 1990s through peacekeeping arrangements.¹⁵⁰ After the military coup, Nigeria sent in more troops under the command of ECOWAS's Military Observer Group (ECOMOG)¹⁵¹ and began fighting the rebels directly.¹⁵² On May 27, the President of the Security Council issued a statement stating that he "strongly deplore[d] this attempt to overthrow the democratically elected government and call[ed] for an immediate restoration of constitutional order," but he did not mention or authorize ECOMOG's intervention.¹⁵³ Ultimately, Nigeria withdrew its troops on June 3, 1997 when its military efforts failed.¹⁵⁴ Intermittent skirmishes between Nigerian troops and the RUF continued until October.¹⁵⁵ In October 1997, Amnesty International published a report accusing the RUF coup government of "commit[ing] serious human rights violations," including torture and extrajudicial killings of those opposed to the new government.¹⁵⁶

On October 8, 1997, the Security Council passed Resolution 1132 which imposed an embargo on the sale or supply "of petroleum and petroleum products and arms and related matériel of all types" to Sierra Leone.¹⁵⁷ Acting under its Chapter VIII authority,

¹⁴⁶ U.N. Secretary-General, *Rep. of the Secretary-General on the Situation in Sierra Leone*, ¶ 2, U.N. Doc. S/1995/975 (Nov. 21, 1995).

¹⁴⁷ U.N. Secretary-General, Letter dated Oct. 7, 1997 from the Secretary-General addressed to the President of the Security Council, at 1, U.N. Doc. S/1997/776 (Oct. 7, 1997).

¹⁴⁸ Karsten Nowrot & Emily W. Schbacker, *The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone*, 14 AM. U. INT'L L. REV. 321, 325 (1998).

¹⁴⁹ Antony Goldman, *Humiliated Nigerian Army Retires Hurt: Botched Intervention in Sierra Leone Has Left the Military Regime Morally Exposed*, FIN. TIMES (London), June 4, 1997 ("Speaking from exile in the Guinean capital, Conakry, Mr[.] Ahmad Tejan Kabbah, Sierra Leone's deposed president told the BBC's African Service that he had invited Nigeria to take military action to overturn an army coup 10 days ago.").

¹⁵⁰ James Rupert, *Nigeria Weighs Risks, Benefits of Involvement in Sierra Leone*, WASH. POST, Feb. 18, 1998, at A12.

¹⁵¹ *Id.*

¹⁵² Nowrot & Schbacker, *supra* note 148, at 327.

¹⁵³ Statement by the President of the Security Council, U.N. Doc. S/PRST/1997/29 (May 27, 1997).

¹⁵⁴ Goldman, *supra* note 149.

¹⁵⁵ *Sierra Leone: Elusive Peace*, OXFORD ANALYTICA DAILY BRIEF SERVS., Dec. 3, 1997, <http://www.oxan.com/display.aspx?ItemID=DB8732>.

¹⁵⁶ AMNESTY INT'L, SIERRA LEONE: A DISASTROUS SET-BACK FOR HUMAN RIGHTS (1997), <http://www.amnesty.org/en/library/asset/AFR51/005/1997/en/1387dc4e-e9a1-11dd-b3a1-f9ff1fd4a5/afr510051997en.pdf>.

¹⁵⁷ S.C. Res. 1132, ¶ 6, U.N. Doc. S/RES/1132 (Oct. 8, 1997).

it also “authorize[d] ECOWAS . . . to ensure strict implementation” of the embargo through inspection of maritime shipments to Sierra Leone.¹⁵⁸ But the Security Council did not authorize ECOMOG to explicitly use force to enforce the sanctions, or to overthrow the junta. After the imposition of the arms and oil embargo, ECOMOG continued to engage in fighting with the RUF despite its designation in the peace plan only as a monitor.¹⁵⁹

On February 6, 1998, Nigeria, “operat[ing] nominally under the auspices of ECOMOG,” again militarily intervened in Sierra Leone after peace talks broke down.¹⁶⁰ It forcibly removed the military government and took control of Freetown on February 13.¹⁶¹ President Kabbah returned soon after to take power,¹⁶² and he began to implement an earlier peace agreement.¹⁶³ In the meantime, the United Nations created and deployed a 70-person U.N. Observer Mission (UNOMSIL) to supplement ECOMOG forces and to monitor “the military and security situation” in the country.¹⁶⁴ The Resolution also included ECOMOG forces in its security arrangements.¹⁶⁵

When the RUF led a surprise advance into Freetown in December 1998, UNOMSIL evacuated.¹⁶⁶ In response, ECOMOG sent in more troops from Nigeria, Ghana, Guinea and Mali.¹⁶⁷ In March 1999, ECOMOG returned to Freetown,¹⁶⁸ and on July 7, 1999 the government and the RUF signed the Lomé peace agreement.¹⁶⁹ The peace agreement provided a new mandate for ECOMOG to engage in peacekeeping, security, and protection of UNOMSIL and DDR personnel, with the goal of ultimately turning ECOMOG into a neutral peacekeeping force operating in conjunction with UNOMSIL.¹⁷⁰

On October 22, 1999, the Security Council passed Resolution 1270, which created the 6,000-member United Nations Mission in Sierra Leone (UNAMSIL) to disarm combatants and monitor the cease-fire.¹⁷¹ UNAMSIL was designed to replace UNOMSIL.¹⁷² The Resolution also approved ECOMOG’s new mandate as recognized in the Lomé peace agreement.¹⁷³ Nigeria indicated that it would withdraw its troops from

¹⁵⁸ *Id.* ¶ 8.

¹⁵⁹ CHRISTINE GRAY, *INTERNATIONAL LAW AND THE USE OF FORCE* 230 (2000).

¹⁶⁰ Nowrot & Schabacker, *supra* note 148, at 330.

¹⁶¹ U.N. Secretary-General, *Fourth Rep. of the Secretary-General on the Situation in Sierra Leone*, ¶ 6, U.N. Doc. S/1998/249 (Mar. 18 1998).

¹⁶² Charge d’Affaires A.I. of the Permanent Mission of Sierra Leone to the United Nations, Letter dated Mar. 9, 1998 from the Charge d’Affaires A.I. of the Permanent Mission of Sierra Leone to the United Nations addressed to the President of the Security Council, U.N. Doc. S/1998/215 (Mar. 9, 1998).

¹⁶³ GRAY, *supra* note 159, at 230.

¹⁶⁴ S.C. Res. 1181, ¶ 6, U.N. Doc. S/RES/1181 (July 13, 1998).

¹⁶⁵ *Id.* ¶ 9.

¹⁶⁶ U.N. Secretary-General, *Fifth Rep. of the Secretary-General on the United Nations Observer Mission in Sierra Leone*, ¶ 6, U.N. Doc. S/1999/237 (Mar. 4, 1999).

¹⁶⁷ *Id.* ¶ 5.

¹⁶⁸ *Id.* ¶ 6.

¹⁶⁹ U.N. Secretary-General, *Seventh Rep. of the Secretary-General on the United Nations Observer Mission in Sierra Leone*, ¶ 2, U.N. Doc. S/1999/836 (July 30, 1999).

¹⁷⁰ *Id.* ¶ 11-12.

¹⁷¹ S.C. Res. 1270, ¶¶ 8-9, U.N. Doc. S/RES/1270 (Oct. 22, 1999).

¹⁷² *Id.* ¶ 10.

¹⁷³ *Id.* ¶ 11.

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Sierra Leone by December 1999.¹⁷⁴ Finally on February 7, 2000, the Security Council passed Resolution 1289 and used its Chapter VII authority to authorize UNAMSIL to deploy 11,100 troops to Sierra Leone to take the place of ECOMOG.¹⁷⁵ Remaining ECOMOG forces were incorporated into UNAMSIL.¹⁷⁶

Justifications for Intervention

Nigeria primarily framed its earlier involvement through ECOMOG in the Sierra Leonean civil war as peacekeeping¹⁷⁷ and the protection of democracy.¹⁷⁸ Some news outlets also reported that its initial intervention was at the request of the recently deposed President Kabbah.¹⁷⁹ U.N. Resolution 1132 later created a more formal role for ECOMOG in monitoring the embargo of Sierra Leone, but did not empower ECOMOG to use military force. ECOMOG justified its more intermittent uses of force against the RUF as consistent with its role in enforcing the U.N. embargo.¹⁸⁰ In justifying its invasion of Sierra Leone and capture of Freetown in February 1998, Nigeria, on behalf of ECOMOG, stressed that this use of military force was only self-defense.¹⁸¹

Reactions of the International Community

The Security Council commended the actions of ECOWAS. On July 11, 1997, the President of the Security Council “welcome[d] the mediation efforts initiated by

¹⁷⁴ GRAY, *supra* note 159, at 231-32.

¹⁷⁵ S.C. Res. 1289, ¶ 9, U.N. Doc. S/RES/1289 (Feb. 7, 2000).

¹⁷⁶ Third Rep. of the Secretary-General on the United Nations Mission in Sierra Leone, ¶ 19, U.N. Doc. S/2000/186 (Mar. 7, 2000).

¹⁷⁷ Rupert, *supra* note 150 (“In explaining Nigeria’s role here, its officials have stressed what Foreign Minister Tom Ikimi last year called ‘our duty to ensure that there is peace and stability in our sub-region.’”).

¹⁷⁸ Goldman, *supra* note 149 (“While no official explanation has been given for the intervention, Mr. Tom Ikimi, Nigeria’s foreign minister, said at the weekend [of June 4, 1997] that his country had been prepared to work with its neighbours in taking ‘appropriate measures’ to help restore Mr. Kabbah’s elected government.”).

¹⁷⁹ *Id.*

¹⁸⁰ *See, e.g.*, U.N. Secretary-General, Letter dated Nov. 14, 1997 from the Secretary-General addressed to the President of the Security Council, ¶¶ 40-41, U.N. Doc. S/1997/895 (Nov. 17, 1997) (“ECOMOG operations are tailored towards enforcing the blockade of supplies of petroleum products and military hard and soft ware to the junta.”).

¹⁸¹ Permanent Rep. of Nigeria to the U.N., Letter from Permanent Rep. of Nigeria to the United Nations addressed to the President of the Security Council, at 2, U.N. Doc. S/1998/123 (Feb. 13, 1998) (“ECOMOG forces which have been peacefully deployed in parts of Sierra Leone have become targets of unprovoked and incessant attacks by the junta. The present engagement of ECOMOG forces with the junta in Sierra Leone was the direct result of these unprovoked attacks, launched by elements of the illegal regime against the ECOMOG peacekeeping forces.”); Permanent Rep. of Nigeria to the U.N., Letter from Permanent Rep. of Nigeria to the United Nations addressed to the President of the Security Council, ¶ 7, U.N. Doc. S/1998/170 (Feb. 27, 1998) (“The Ministers noted that the recent military operations in Freetown were triggered by the unprovoked attacks on ECOMOG positions, which reached a climax on 5 February 1998. In the circumstance, ECOMOG had had no option but to defend itself in accordance with international rules of engagement for peacekeeping operations.”).

ECOWAS and expresse[d] its full support for the objectives of these efforts.”¹⁸² A few months later, in Resolution 1132 imposing sanctions on Sierra Leone, the Security Council “[e]xpresse[d] its strong support for the efforts of the ECOWAS Committee to resolve the crisis in Sierra Leone.”¹⁸³ After ECOMOG seized Freetown, the President of the Security Council “commend[ed] the important role that the Economic Community of West African States (ECOWAS) has continued to play towards the peaceful resolution of this crisis.”¹⁸⁴ The Security Council passed resolutions expressing similar sentiments through 1999, though none of these resolutions explicitly addressed the legality of ECOMOG’s invasions.¹⁸⁵

The Organization for African Unity commended the intervention at its annual summit meeting in Zimbabwe.¹⁸⁶ Russia, though, in the debate before the passage of Resolution 1132, remarked that “cooperation between the United Nations and the regional organizations on questions relating to the maintenance of peace and security should be based on the Charter of the United Nations and that enforcement action should not be undertaken by regional organizations without the authorization of the Security Council.”¹⁸⁷

8. NATO’s Intervention in the Federal Republic of Yugoslavia (Kosovo Province) (1999)

Facts

In the spring of 1999, the North Atlantic Treaty Force (NATO) engaged in an intensive aerial bombing campaign in the Federated Republic of Yugoslavia (FRY) (now called Serbia), designed to curb atrocities being committed against ethnic Albanians in the separatist province of Kosovo. At the time of the crisis, Kosovo was a province

¹⁸² Statement of President of the Security Council, at 1, U.N. Doc. S/PRST/1997/36, (July 11, 1997).

¹⁸³ S.C. Res. 1132, *supra* note 157, ¶ 3.

¹⁸⁴ Statement by the President of the Security Council, at 1, U.N. Doc. S/PRST/1998/5 (Feb. 26, 1998).

¹⁸⁵ See S.C. Res. 1181, *supra* note 164, ¶ 5 (“Commending the positive role of ECOWAS and ECOMOG in their efforts to restore peace, security and stability throughout the country at the request of the Government of Sierra Leone, and not[ing] the role of ECOMOG in assisting the implementation of the disarmament, demobilization and reintegration plan adopted by the Government of Sierra Leone, including the provision of security and responsibility for arms collection and destruction.”); S.C. Res. 1231, ¶ 10, U.N. Doc. S/RES/1231 (Mar. 11, 1999) (“Commending the efforts of ECOMOG towards the restoration of peace, security and stability in Sierra Leone, and call[ed] upon all Member States to provide ECOMOG with financial and logistical support.”); S.C. Res. 1260, ¶ 3, U.N. Doc. S/RES/1260 (Aug. 20, 1999) (“[C]ommending” ECOMOG “on the outstanding contribution which it had made to the restoration of security and stability in Sierra Leone.”); S.C. Res. 1270, *supra* note 171, ¶ 7 (“Reiterat[ing] its appreciation for the indispensable role which ECOMOG forces continue to play in the maintenance of security and stability in and the protection of the people of Sierra Leone, and approv[ing] the new mandate for ECOMOG.”).

¹⁸⁶ See Howard W. French, *Nigeria, Set Back by Sierra Leone Rebels, Flies in More Troops*, N.Y. TIMES, June 4, 1997, at A7 (“[O]ne delegate after another supported Nigeria’s efforts, saying that the May 25 coup by junior officers against Sierra Leone’s first democratically elected leader, Ahmad Tejan Kabbah, must not be allowed to stand.”).

¹⁸⁷ U.N. SCOR, 52nd Sess., 3822nd mtg., at 9, U.N. Doc. S/PV.3822 (Oct. 8, 1997).

located in southern FRY, substantially populated by ethnic Albanians.¹⁸⁸ While Kosovo had been granted a high degree of independence in the 1970s, in 1989, FRY President Slobodan Milosevic revoked Kosovo's autonomous status.¹⁸⁹ Under Milosevic's rule, ethnic Albanians were discriminated against, leading to increasing separatist sentiment and, ultimately, a turn to violence by the Kosovo Liberation Army (KLA).¹⁹⁰ By 1998 the FRY began responding to this unrest by attacking KLA targets in urban centers using heavy weapons and air strikes.¹⁹¹ As the KLA continued its attacks, the special police and security forces under Milosevic's direction engaged in reprisals against the Kosovar Albanian population to convince them not to support the KLA.¹⁹² During 1998, the fighting between FRY forces and the KLA "resulted in the deaths of over 1,500 Kosovar Albanians and forced 400,000 people from their homes."¹⁹³

Despite international condemnation—including Security Council Resolution 1160, which condemned the excessive use of force by the FRY and imposed an arms embargo on the FRY under Chapter VII¹⁹⁴—the attacks by the Milosevic government continued.¹⁹⁵ In October 1998, the North Atlantic Council issued activation orders for a NATO air campaign in the FRY¹⁹⁶ but the campaign was averted when an agreement was reached between NATO, the Organization for Security and Cooperation in Europe (OSCE), and the FRY government.¹⁹⁷ But FRY attacks continued into 1999,¹⁹⁸ and, after talks broke down on March 15, the FRY initiated a "new campaign in Kosovo of ethnic cleansing."¹⁹⁹

Asserting that the FRY government had fallen through on its commitments, NATO initiated air strikes on March 23.²⁰⁰ The strikes targeted both military facilities and fielded forces in Kosovo, as well as "strategic" targets across FRY more broadly.²⁰¹

¹⁸⁸ ROBERT F. GORMAN, *GREAT DEBATES AT THE UNITED NATIONS: AN ENCYCLOPEDIA OF FIFTY KEY ISSUES, 1945-2000*, at 365 (2001).

¹⁸⁹ *Id.*

¹⁹⁰ WHEELER, *supra* note 7, at 257-258.

¹⁹¹ *Id.* at 258.

¹⁹² GORMAN, *supra* note 188, at 366.

¹⁹³ *NATO's Role in Relation to the Conflict in Kosovo*, NATO (July 15, 1999), <http://www.nato.int/Kosovo/history.htm>.

¹⁹⁴ S.C. Res. 1160, U.N. Doc. S/RES/1160 (Mar. 31, 1998).

¹⁹⁵ GORMAN, *supra* note 188, at 365-367; S.C. Res. 1160, *supra* note 194 (imposing an arms embargo on the FRY and calling for a peaceful resolution differences); WHEELER, *supra* note 7, at 258-259.

¹⁹⁶ NATO, Statement by the Secretary General Following Decision on the ACTORD, NATO HQ, (Oct. 13, 1998), in HEIKE KRIEGER, *THE KOSOVO CONFLICT AND INTERNATIONAL LAW: AN ANALYTICAL DOCUMENTATION 1974-1999*, at 289 (2001).

¹⁹⁷ *NATO-FRY, Agreement Providing for the Establishment of an Air Verification Mission over Kosovo, Belgrade, 15 October 1998*, in KRIEGER, *supra* note 196, at 291-292; Agreement on the Kosovo Verification Mission of the Organization for Security and Cooperation in Europe, *transmitted by* Letter dated Oct. 19, 1998 from the Permanent Representative of Poland to the United Nations addressed to the Secretary-General, U.N. Doc. S/1998/978 (Oct. 20, 1998).

¹⁹⁸ GORMAN, *supra* note 188, at 367; WHEELER, *supra* note 7, at 264-265.

¹⁹⁹ WHEELER, *supra* note 7, at 265.

²⁰⁰ NATO, Secretary General, Press Release (1999)040 (Mar. 23, 1999), <http://www.nato.int/docu/pr/1999/p99-040e.htm>; WHEELER, *supra* note 7, at 265.

²⁰¹ W.J. Fenrick, *Targeting and Proportionality during the NATO Bombing Campaign Against Yugoslavia*, 12 EUR. J. INT'L. L. 489, 490 (2001); THE INDEPENDENT INT'L COMM'N ON KOSOVO, *THE KOSOVO*

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A peace settlement was eventually reached in early June, and NATO air strikes were suspended on June 10.²⁰²

Justifications for Intervention

NATO's Secretary-General described the objective of the airstrikes as "disrupting the violent attacks being committed by the Serb Army and Special Police Forces and weakening their ability to cause further humanitarian catastrophe" thus "prevent[ing] more human suffering and more repression and violence against the civilian population of Kosovo."²⁰³ He added that NATO had "a moral duty" to intervene.²⁰⁴

Individual NATO member states went into more detail on their justifications for the military strikes in public statements and in U.N. Security Council debates. While the U.S. and U.K. partly framed the issue as implicating the collective security of NATO's European member states,²⁰⁵ most states focused on the humanitarian crisis unfolding in Kosovo. Some claimed that international law provided a general legal right to intervene, even absent Security Council approval—to avert humanitarian catastrophe in extreme cases.²⁰⁶ The U.S. government similarly claimed that the intervention, despite being

REPORT: CONFLICT, INTERNATIONAL RESPONSE, LESSONS LEARNED 179 (2000) (noting that NATO eventually expanded its targets to "civilian infrastructure").

²⁰² NATO, *Statement by the Secretary General on Suspension of Air Operations, Brussels, 10 June 1999*, in KRIEGER, *supra* note 196, at 309.

²⁰³ NATO Press Release (1999)040, *supra* note 200.

²⁰⁴ *Id.*

²⁰⁵ See, e.g., WHEELER, *supra* note 7, at 266 (quoting the statement of the U.K. Foreign Secretary on March 25, 1999, in which he argued that the Kosovo conflict "would have spilled over into the neighbouring countries of the region, and then NATO would have been forced to act, but in circumstances more difficult and dangerous than now"); Jim Garamone, *Clinton Makes Case for Kosovo Intervention*, AM. FOREIGN PRESS SERV., DEP'T OF DEF., Mar. 24, 1999, <http://www.defense.gov/news/newsarticle.aspx?id=42001> (pointing to the strategic interests of the United States in ensuring a stable and peaceful Europe).

²⁰⁶ See, e.g., U.N. SCOR, 54th Sess., 3988th mtg. at 8, U.N. Doc. S/PV.3988 (Mar. 24, 1999) (statement of the Dutch representative) (arguing that if the Security Council is unwilling or unable to authorize an intervention in a humanitarian crisis, "we cannot sit back and simply let the humanitarian catastrophe occur. In such a situation we will act on the legal basis we have available, and what we have available in this case is more than adequate"); *id.* at 12 (statement of the U.K. representative) ("The action being taken is legal. It is justified as an exceptional measure to prevent an overwhelming humanitarian catastrophe."). During the debate over Resolution 1244, passed after the conclusion of NATO's campaign, the Netherlands took this argument in an even more ambitious direction, arguing that a legal right to humanitarian intervention could potentially preempt the U.N. Charter regime since "Charter is not the only source of international law." He added that

[t]he Charter, to be sure, is much more specific on respects for sovereignty than on respect for human rights, but since the day it was drafted the world has witnessed a gradual shift in that balance, making respect for human rights more mandatory and respect for sovereignty less absolute. Today, we regard it as a generally accepted rule of international law that no sovereign State has the right to terrorize its own citizens.

U.N. SCOR, 54th Sess., 4011st mtg. at 12, U.N. Doc. S/PV.4011 (June 10, 1999). The Canadian representative agreed with the Dutch representative's statements, but framed the tension at issue slightly differently, discussing the need to "more readily reconcile[] . . . the tensions in the United Nations Charter between state sovereignty on the one hand and the promotion of international peace and security on the other . . . when internal conflicts become internationalized, as in the case of Kosovo." *Id.* at 13-14. Belgium argued in the ICJ proceedings on the legality of NATO's intervention that "the Kingdom of Belgium takes

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unauthorized, was fully consistent with the U.N. Charter.²⁰⁷ A minority of NATO states pressed the view that the strikes were in conformity with existing Security Council Resolutions.²⁰⁸ And many, if not most, official statements simply noted the humanitarian objective of the intervention—and the moral imperatives for rescuing the people of Kosovo—but did not directly address the legality of the intervention.²⁰⁹

Reactions of the International Community

Three core UNSC resolutions dealt with Kosovo prior to the intervention. Those include resolutions 1160 (1998),²¹⁰ 1199 (1998)²¹¹ and 1203 (1998).²¹² One additional resolution, resolution 1244 (1999),²¹³ followed the conclusion of air strikes. All four resolutions were adopted under the UNSC's Chapter VII power. Resolution 1160 condemned the excessive use of force by the FRY and acts of terrorism by the KLA, and, among other things, imposed an arms embargo on the FRY.²¹⁴ Resolution 1203, *inter alia*, “endorse[d] and supporte[d]” the agreements between the FRY and NATO and the OSCE, and demanded prompt implementation of the agreements.²¹⁵ Resolution 1244 set out the support framework for post-conflict Kosovo, and, among other things, reaffirmed

the view that this is an armed humanitarian intervention, compatible with Article 2, paragraph 4, of the Charter, which covers only intervention against the territorial integrity or political independence of a State.” Oral Pleadings of Belgium, *Legality of Use of Force (Yugo. v. Belg.)*, 1999 I.C.J. Pleadings 12 (May 10, 1999, 3:00 p.m. hearing). Belgium grounded its legal justification in an interpretation of Article 2(4) that has been dismissed by the majority of scholars.

²⁰⁷ U.N. SCOR, 54th Sess., 3989th mtg. at 5, U.N. Doc. S/PV.3989 (Mar. 26, 1999) (statement of the U.S. representative) (“The draft resolution . . . alleges that NATO is acting in violation of the United Nations Charter. This turns the truth on its head. The United Nations Charter does not sanction armed assaults upon ethnic groups, or imply that the international community should turn a blind eye to a growing humanitarian disaster.”).

²⁰⁸ *See, e.g., id.* at 4 (statement of the Dutch representative) (“The NATO action . . . follows directly from resolution 1203 (1998), in conjunction with the flagrant non-compliance on the part of the [FRY].”); U.N. Doc. S/PV.3988, *supra* note 207, at 9 (in which France argued that intervention was justified because of “violation by Belgrade of its international obligations, which stem in particular from the Security Council resolutions adopted under Chapter VII”).

²⁰⁹ *See, e.g.,* Press Release, Department of Defense, Clinton Makes Case for Kosovo Intervention (Mar. 24, 1999), available at <http://www.defense.gov/news/newsarticle.aspx?id=42001> (pointing to the moral argument in favor of humanitarian intervention); Statement of the U.K. Foreign Secretary, House of Commons (Mar. 25, 1999), quoted in WHEELER, *supra* note 7, at 265-266 (“We were left with no other way of preventing the present humanitarian crisis from becoming a catastrophe . . . Not to have acted, when we knew the atrocities that were being committed, would have been to make ourselves complicit in their repression.”); U.N. Doc. S/PV.3988, *supra* note 207, at 5, 17 (statement of the U.S. representative) (arguing “that action by NATO is justified and necessary to stop the violence and prevent an even greater humanitarian disaster”); *id.* (statement of the Canadian representative) (arguing that “NATO’s objectives are to avert an ever-widening humanitarian crises” and that “[h]umanitarian considerations underpin our action”); *id.* (statement of the German representative) (“On the threshold of the 21st century, Europe cannot tolerate a humanitarian catastrophe in its midst . . . We, the countries of the European Union, are under a moral obligation to ensure that indiscriminate behaviour and violence . . . are not repeated.”).

²¹⁰ S.C. Res. 1160, *supra* note 194.

²¹¹ S.C. Res. 1199, U.N. Doc. S/RES/1199 (1998) (Sept. 23, 1998).

²¹² S.C. Res. 1203, U.N. Doc. S/RES/1203 (1998) (Oct. 24, 1998).

²¹³ S.C. Res. 1244, U.N. Doc. S/RES/1244 (1999) (June 10, 1999).

²¹⁴ S.C. Res. 1160 (1998), *supra* note 194, pmbi., ¶ 8.

²¹⁵ S.C. Res. 1203 (1998), *supra* note 212, ¶ 1.

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the commitment of member states to the sovereignty and territorial integrity of the FRY and the need for substantial autonomy for Kosovo.²¹⁶ The resolution did not refer to the NATO intervention.

In a UNSC debate held immediately after the strikes began, some states (in particular, Russia, China, Belarus and India) strongly criticized the NATO intervention as a violation of the Charter. Russia stated that “[t]hose who are involved . . . must realize the heavy responsibility they bear for subverting the Charter and other norms of international law and for attempting to establish in the world, de facto, the primacy of force and unilateral diktat.”²¹⁷ India characterized the NATO air strikes as a “clear violation of Article 53 of the Charter,” which governs action undertaken by regional organizations as authorized by the Security Council.²¹⁸ Other states expressed support for the strikes (with some discussing the legality of the intervention).²¹⁹ The remaining states were effectively neutral, noting that they did not support the unilateral intervention, but apparently at a loss as to what alternatives remained.²²⁰ These allegiances remained largely the same in a later Council debate on a draft resolution condemning the NATO strikes (which did not pass)²²¹ and another Council debate over the legality of the intervention after the intervention had concluded.²²²

²¹⁶ S.C. Res. 1244 (1999), *supra* note 213, pmb1.

²¹⁷ U.N. Doc. S/PV.3988, *supra* note 206, at 2. Russia also noted concern for the rule of law more generally, stating that if the trend of unilateral conduct is not stopped “the virus of illegal unilateral approaches could spread not merely to other geographical regions but to spheres of international relations other than questions of peace and security.” *Id.* at 3.

²¹⁸ *Id.* India noted, taking a position similar to China, that the U.N. “has no role in the settlement of domestic political problems of the Federal Republic.” *Id.* at 116. But, unlike China, it acknowledged that “[t]he only exception laid down by Article 2, paragraph 7, would be the ‘application of enforcement measures under Chapter VII.’” *Id.* In short, in India’s view, since “[The NATO] attacks . . . have not been authorized by the Council,” they “are therefore completely illegal.” *Id.* at 16.

²¹⁹ These states were Gambia, Slovenia, Malaysia, and Bosnia and Herzegovina. *Id.* at 6, 7, 9, 18-19.

²²⁰ These states were Bahrain, Brazil, Argentina, and Gabon. *Id.* at 7, 8, 10-11.

²²¹ *See* Belarus, India, and Russian Federation: Draft resolution, U.N. Doc. S/1999/328 (Mar. 26, 1999); U.N. Doc. S/PV.3989, *supra* note 207.

²²² U.N. Doc. S/PV.4011, *supra* note 206.