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# MILITARY INTERVENTION AND THE EUROPEAN UNION

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INSTITUT  
D'ETUDES  
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CHAILLOT PAPER 45

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*Martin Ortega*

**Institute for Security Studies  
Western European Union**

**Paris - March 2001**



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*(A French version of this paper is also available from the Institute)*

### **The Institute for Security Studies of Western European Union**

**Director:** Nicole Gnesotto

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Martin Ortega, who was born in 1960, has been a research fellow at the Institute for Security Studies of WEU since December 1997. He has a Doctorate in public international law from the Autonomous University, Madrid, and was a senior associate member of St Antony's College, Oxford, in 1988-89. He lectured in public international law and international relations at the Autonomous University from 1990 to 1992, and held a similar position at the University of Salamanca from 1992 to 1997. Publications include papers on security and cooperation in the Mediterranean, war crimes, and the decision-making process in the EU, and books: *La legítima defensa del territorio del estado* (on self-defence) and *Hacia un gobierno mundial* (on the UN Security Council). More recently, he has edited an Institute publication entitled *The future of the Euro-Mediterranean security dialogue* (March 2000). He is currently a senior lecturer at Complutense University, Madrid, on detachment at the Institute.

The author again thanks all participants at the seminar organised by the Institute in June 1999 on 'The legitimacy of military interventions' for the very interesting ideas that they contributed to the debate. The Institute's research team has always patiently given its support to the preparation of this *Chaillot Paper* and has made very useful comments. Tobias Heider, Nicolas Mietton and Manuel Bödeker, three trainees at the Institute, and Daniel Keohane, a visiting fellow, helped with research. The author is particularly grateful to his colleague Julian Lindley-French for the considerable amount of time he devoted to improving the style of certain passages in the English manuscript.

## *Preface*

The Kosovo crisis marked a turning point in the development of the international system, not because the West was in any way improper in freeing itself from the constraints of realpolitik and UN legitimacy, but because it demonstrated the limits of those constraints. What Kosovo showed was surely not so much a violation of international law and the principle of non-intervention as the inadequacy of that law, which was drawn up half a century ago and marked by two historical, and therefore relative, notions of power and international order.

That is just one of the fundamental issues analysed by Martin Ortega, lecturer in international law and research fellow at the Institute since 1997. This *Chaillot Paper* proposes a new set of conditions by which to determine the best possible link between the legality, legitimacy and political opportuneness of military intervention, since the principle of non-intervention in a state's internal affairs no longer appears adequate, either as a basis of international law or as an assurance of stability in the post-Cold War world.

National sovereignty of course remains the basic principle on which the international order is founded: respect for the territorial integrity of states and non-interference in their internal affairs are the foundation of international law as codified by the Charter of the United Nations, and one of the international community's major criteria for choosing between action or non-intervention. But the principle of sovereignty has always been rich in perverse effects. Indeed, attempting to combine respect for states' sovereignty, human rights and the principle of self-determination has always been one of the international order's major deadlocks. However, since the end of the Cold War a new regulation has gradually been put in place that will in the long term make it possible to redefine the basis and legitimacy of military interventions, above all even in the absence of a United Nations mandate. One of the new basic assumptions of the international order that is in gestation is that sovereignty can never be a pretext for genocide, a principle that is perhaps the most stabilising for international security in the twenty-first century.

Yet the originality of the analysis developed by Martin Ortega goes well beyond a legal-political discussion on the legitimacy on military intervention. This *Chaillot Paper* in a sense represents a first, in that it proposes that the European Union should systematically apply the listed criteria of legitimacy of military intervention. Indeed, the development of a common European security and defence policy obliges member states to think seriously about the conditions, limits and criteria that are pertinent to the use of force by the EU: in short, to consider the development of a European doctrine on intervention, something that already underlies the many existing texts and treaties dealing with ESDP. Martin Ortega here puts forward an interpretation of those texts that is both exhaustive and pertinent to future EU military operations.

With the allied intervention in Kosovo there began to emerge, at least on the European continent, a system of values in which the defence of democracy and human rights outweighs the principle of sovereignty, in its strictest interpretation, in which military intervention may be illegal yet legitimate, and in which both the constraints of realpolitik and the operating rules of UN multilateralism are loosened/disappear. Surely, the European Union has a historical responsibility to promote a new form of international regulation of this type, in which morality is a declared basis of policy, human rights are more important than states' rights, and democracies can only be true to themselves and their principles by carrying them through to their logical conclusion, in other words by pursuing them even further.

**Nicole Gnesotto**  
**Paris, February 2001**



# *Introduction*

The question of military intervention has recently attracted much interest because, in the 1990s, it was demonstrated that certain instances of the use of force decided upon and carried out by states without Security Council authorisation were none the less necessary and acceptable. In these cases, intervention was not, as it had been during the Cold War or in previous centuries, an instrument used by powerful states to dominate weak ones, but rather a tool used to attain objectives such as the avoidance of humanitarian catastrophes and the re-establishment of international peace and security. As a result, the completely negative image of intervention that was predominant during the Cold War has changed. Nowadays, the challenge is to find a precise definition of the circumstances in which armed intervention is acceptable and, conversely, the situations where non-intervention must still be the rule.

This *Chaillot Paper*, which forms part of the response to that challenge, attempts to define a principle of 'limited intervention' that strikes a balance between the international community's expectations regarding respect for human rights, and state sovereignty. On the other hand, it poses the question whether, and if so how, this new principle will affect the European Union in the future. In fact the EU was not directly concerned with the use of armed force until the year 1999, during which the Cologne and Helsinki Councils decided on the creation of a rapid reaction force, to be operational in 2003, that will carry out Petersberg missions. The second main theme of this paper is thus the question how the EU force will be used and to what extent it will be used for legitimate interventions.

Chapter One is devoted to a clarification of concepts, since several historical patterns of intervention and several versions of the principle of non-intervention are defined. Chapters Two to Four look in turn at the three dimensions of intervention, i.e., its *legality* according to international law, its *legitimacy* or acceptability in the eyes of the international community and its *political* dimension, in other words an evaluation of the advantages and disadvantages for the 'actors' and 'target states' involved in an intervention. Following this review of the substantial changes that occurred in these three areas during the 1990s, and especially in the wake of NATO's intervention in Kosovo, Chapter Five suggests what a new principle of limited intervention should include, by identifying the criteria governing acceptable inter-

ventions and the situations in which intervention is proscribed. Finally, Chapter Six looks at ways in which the Union's military force could be employed, by analysing the Treaty on European Union and other relevant documents.

The study of military intervention, which is a central problem in international relations, requires certain choices to be made. The main concept examined in this paper is *military intervention in a state by one or a number of other states*. The first element of this concept is thus 'military' intervention, which means the use of armed force. This excludes other forms of intervention, such as political or economic, which also pose specific problems in international relations. It is sometimes difficult to distinguish military intervention from other acts such as aggression, colonialism or reprisal, or even assistance in the legitimate defence of a state. However, the term is normally used to describe specific coercive actions that are designed to bring about a change in a government's policy, or even a change of government, as for example the Soviet Union's interventions in Hungary (1956) and Afghanistan (1979), or US intervention in Panama (1989).

The second point is that the force in question is used in the relations between two states. The excessive use of force by a government against its own citizens or in a civil war, even though it may be unacceptable, can hardly be considered an 'intervention'. Thus, Yugoslav armed forces did not 'intervene' in Kosovo, nor did those of Russia in Chechnya, although both countries were rightly criticised for their actions. On the other hand the external action against the Federal Republic of Yugoslavia *was* intervention. There are in addition cases that are difficult to classify: for example, it might be asked just how independent Tibet was at the time China finally occupied it in 1950.

Thirdly, intervention in the sense considered here is that carried out by one or a number of states, which excludes from this study many instances of the use of force decided upon or authorised by the UN Security Council since 1990. In this paper, the expression 'state-led intervention' applies to intervention that has not been authorised by the Security Council. The legitimacy of 'interventions' carried out with an SC mandate cannot be challenged, whereas state-led interventions require justification. Indeed, the fact that such a mandate implies the agreement of all states, in accordance with the Charter of the United Nations, justifies this distinction. There are

no borderline cases, since the existence or absence of an SC mandate can always be established. For example, in Korea in 1950, in Operation *Provide Comfort* in 1991 and in the enforcement of the air exclusion zones in Iraq, there was no authorisation from the Council. It is therefore that type of situation that is analysed here. On the other hand, authorisation was given in other cases, even if the mandate came after the military operation had been decided upon (as for instance Operation *Alba*, which was authorised by Security Council Resolution 1101 of 1997), or the authorised states carried out their military actions well after the authorisation had been given (for example, NATO's action in Bosnia in September 1995 was authorised by SC Resolutions 816 and 836 of 1993).

Three other factors which at first sight might appear to affect the issue are not in fact apposite to the definition of 'intervention' proposed here. First, the character of the intervention must not be included in the initial definition because it must itself be established. The point of departure for many recent studies,<sup>1</sup> for example, is the term 'humanitarian intervention', but that expression always has positive connotations. Indeed, one has to begin by examining all types of intervention, distinguishing legitimate (or humanitarian) interventions from those that are not. Another element that is not relevant to the definition is the agreement of the 'target' state, since appeals from 'legitimate governments' for intervention were manipulated to such an extent during the Cold War that one cannot reasonably accept that a request from a government of itself systematically means that the intervention can be considered as legitimate aid. Third, the democratic or non-democratic nature of the intervening or target states has no bearing on the acceptability of the use of force. Historical examples show that non-democratic states have carried out valid interventions, and that, conversely, democratic states have been involved in questionable interventions.

The new principle of limited intervention applies to situations in which intervention is legitimate. There are two ways of looking at the central concept of *legitimacy*. It can either be assessed on the basis of ideals, such as values or ethics, or seen as a function of consensus. In this paper, which adopts the consensual approach, the concept of 'international community' is introduced as a basis for legitimacy. International society is made up of

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<sup>1</sup> For instance the study *Humanitarian Intervention* (Copenhagen: Danish Institute of International Affairs, 1999), referred to hereinafter as *Danish Report*.

states, whereas the international community includes all the states, international organisations and other actors that participate in the complex life of the post-Cold War world.

The search for legitimacy is alien to the main tradition in international relations theory – realism – which, at its most extreme, makes no distinction between legitimate and illegitimate uses of armed force. From this point of view, for example, the Security Council plays only a marginal role. When it has authorised coercive measures, this has been because the great powers, the states concerned, the permanent members or the Western states (according to various versions of realism) needed to intervene in order to promote or defend their own interests. Nevertheless, recent practice shows that collective actions carried out in the 1990s were based on common interests. Indeed, the realist school has difficulty in explaining the existence of common interests and values, and international institutions such as the United Nations and the European Union.

In the 1990s, military intervention by individual states and wars between nations were, with the unhappy exception of the region of central Africa, rare, while at the same time the international community exerted pressure to bring civil wars to a halt and prevent humanitarian catastrophes. In this, the European states played an essential role. However, the European Union and its member states must continue to be actively involved if international order is to be maintained. Indeed, the Europeans must be prepared to continue to employ necessary force to uphold the principles and objectives of the United Nations, and must continue to criticise military ventures that do not accord with these principles. It is in that context that the European force should be employed.

# Chapter One

## THE EVOLUTION OF MILITARY INTERVENTION

The purpose of this chapter is to show to what extent the practice of military intervention has changed since 1990. With this broad objective in mind, some conceptual tools, together with a certain degree of simplification, will be needed to tackle the richness and complexity of this concept's evolution.<sup>2</sup> Firstly, for clarity ten *patterns* of actual military interventions will be discerned, drawn from the many historical examples. Secondly, some *principles* which have regulated intervention will be identified. Finally, the practice of military intervention before 1990 will be compared with intervention after the end of the Cold War.

1. *Imperialistic pattern.* A powerful state intervenes militarily in another state in order to gain some advantage, to further its interests and to increase its influence both in the target state and on the international scene. A well-known version of this pattern is *hegemonic intervention*, which occurs when a hegemonic state intervenes within its sphere of influence to avoid a political development that is not favourable to its interests.

2. *Colonial.* National interests of powerful colonialist states are coercively imposed upon weak (newly independent) states. The Opium Wars against China and the 'gunboat diplomacy' employed against Latin America republics in the nineteenth century are examples of this pattern.

3. *Balance of power.* For centuries, the main feature regulating relations between European states was the balance of power between sovereign states, and in practice this led to non-intervention. However, war and intervention were sometimes used as tools to redress that balance and to prevent the transformation of a multipolar system into a hegemonic one dominated by one actor. In the War of the Spanish Succession at the beginning of the eighteenth century, for instance, the apparent justification

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<sup>2</sup> This paper will only consider the most important cases of military intervention. Some studies have recorded a huge number of interventions: see for instance, Margaret G. Hermann and Charles W. Kegley, Jr., 'The U.S. use of military intervention to promote democracy: evaluating the record', *International Interactions*, vol. 24-2, 1998, pp. 91-114; and Allan R. Millet, 'U.S. interventions abroad, 1798-1999', *Strategic Review*, Spring 2000, pp. 28-38.

for foreign intervention was the strength of the claims of the respective pretenders to the throne; however, the real objective was to prevent Bourbon France from becoming too powerful.

4. *Ideological.* An intervening state seeks to change the political system of the target state for ideological reasons. For instance, from 1815 until 1830 the 'Holy Alliance' intervened to support monarchical regimes in the face of democratic revolutions in Europe, whilst some US interventions in the 1980s were designed to uphold democracy.

5. *Self-determination.* Military intervention in civil wars may have imperialistic or ideological motivations, but the intention may also be to support one of the parties claiming the right to national self-determination. Similarly, foreign intervention may also be intended to help peoples who are struggling against colonialist occupation.

6. *Self-defence.* Armed force is used in a neighbouring state to respond to armed incursions from it which are not restrained by its government. In principle, the aim of this type of intervention is not to overthrow the government of the target state, but to prevent the attacks. Israel in the 1980s and Turkey in northern Iraq more recently have intervened following this pattern.

7. *Cold War pattern of intervention.* Between 1945 and 1990, the two superpowers intervened in their respective spheres of influence or in disputed zones, on both imperialistic and ideological grounds. This spilled over into the decolonisation process, in a systemic bipolar environment that was so unusual that a new pattern of intervention could be defined. Typical cases were the USSR's interventions in Hungary in 1956 and in Afghanistan in 1979, or the American intervention in the Vietnam civil war from 1964.

8. *Humanitarian intervention.* One state or a group of states use armed force to alleviate the suffering of human beings in the territory of other states. Two situations may be distinguished: (a) protection of nationals abroad, for instance the Israeli intervention in Entebbe, Uganda, in 1976, or the French intervention in Kinshasa, Zaire, in 1991; (b) protection of the population of other states or of minorities, in the event of humanitarian catastrophes, even those provoked by their own governments. Operation *Provide Comfort* in northern Iraq in 1991 was a case that falls into this category. NATO's

intervention in Kosovo in 1999 also belongs to this type, as will be discussed more thoroughly below.

9. *Collective intervention.* The international community as a whole decides to intervene militarily in a state to maintain international peace and security. There are two main differences between this pattern and the previous eight: the authorising actor is the United Nations Security Council representing the international community, irrespective of the fact that intervention is actually made by one or several states or by an international organisation, and the overall declared objective is to maintain or restore international peace and security. This type of military intervention, therefore, has only been possible when the society of states has been coordinated in a global organisation with general competencies. Forceful interventions authorised by the UN Security Council during the 1990s in Iraq, Somalia, Bosnia, Haiti, and East Timor are examples of this pattern.

10. *Punitive intervention.* Some states carry out selected armed attacks on another state to penalise previous wrongdoings attributed to the target state. The US air attack on Libya in 1986 or the American missile attacks against Afghan and Sudanese objectives in 1998 might be included in this category.

In addition to these historical patterns of intervention, various normative *principles* have emerged at various times. In the wake of military interventions, intervening powers claim, with varying degrees of conviction, justification and reasons for their action, whereas other states employ a number of arguments to condemn interventions. Principles regarding intervention have thus been framed by international society as a result of those exchanges. Of course, principles are comprehensive legal norms, but they are not confined to the legal domain. International principles are, rather, non-written formulations of the moral, political and juridical underpinnings of international order at a given moment. In this sense they may be considered general values, in addition to being principles, that are evolving continuously. In response to the phenomenon of military intervention, non-intervention has always been a value linked to state sovereignty, and has evolved in parallel with the changing content of the latter. Four historical versions of the principle of non-intervention may thus be identified: (1) the *European principle of non-intervention*, developed for the European concert of nations from the beginning of the modern age in the sixteenth century until the Second World War; (2) the *legalistic principle of non-intervention*,

elaborated during the Cold War under the aegis of the United Nations and an extreme version of the former; (3) the *principle of collective intervention*, which emerged in a relatively short period of time through interventions by the UN Security Council during the last decade; and (4) most recently, what could be termed the *principle of limited intervention*, which allows states to use armed force in other states for humanitarian reasons and perhaps for the very purposes declared in the UN Charter, i.e., to maintain international peace and security. Nevertheless, although the *legalistic principle* has not impeded the rapid creation of a *principle of collective intervention*, it is not yet absolutely clear whether it has given way to a new *principle of limited intervention*. We are going through a transitional period in which a clash between the legalistic principle and the latter persists, and as a consequence the exact content of the principle of limited intervention has yet to be established.

Obviously enough, it is not possible to give a detailed historical account of the evolution of both patterns and principles of intervention in this paper. Nevertheless, it is very important to underscore the quantitative and qualitative change that the end of the Cold War led to in this field. Between 1945 and 1990, there were few cases of intervention that did not belong to the *Cold War pattern of intervention*. Nowadays, there is an animated academic debate about the role that ideology, on the one hand, and power politics, on the other, played in the Cold War.<sup>3</sup> For the purposes of this study, both elements can be considered to have been equally relevant. Several rationalisations for superpower intervention were used by the United States and the USSR, employing a mixture of ideological arguments and strategic motivations. President Truman's doctrine of containment, formulated in 1947, engaged the United States in a fight against communism not only in Greece and Turkey but anywhere else. The Brezhnev doctrine was formulated in the 1960s to justify interventions on the grounds of the irreversibility of the political choice that communist states had made. In the 1980s, the Reagan doctrine affirmed the US disposition to support insurgents attempting to overthrow communist or radical regimes that endangered the interests of the United States. Indeed, the moral advantage that the United States and its allies had over the communist bloc was absolutely clear: the tyranny of communism in its application bore no comparison with democracy. Presi-

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<sup>3</sup> One introduction to this issue is: Mark Kramer, 'Ideology and the Cold War', *Review of International Studies*, October 1999, pp. 39-76.



dent Truman said in his famous speech to the Congress on 12 March 1947, in which he enunciated his doctrine:

‘At the present moment in world history nearly every nation must choose between alternative ways of life. The choice is too often not a free one. One way of life is based upon the will of the majority, and is distinguished by free institutions, representative government, free elections, guarantees of individual liberty, freedom of speech and religion, and freedom from political oppression.

The second way of life is based upon the will of the minority forcibly imposed upon the majority. It relies upon terror and oppression, a controlled press and radio, fixed elections, and the suppression of personal freedoms.’

Unfortunately, too often the United States and its allies supported governments that precisely reflected the second way of life as defined by President Truman. Chile, Iran, Vietnam and South Africa have all been ruled by repressive regimes and yet were supported by Western states. Perhaps on occasion the climate of the Cold War left democracy with little option but to fight communism employing non democratic means. However, as Robin Cook, the British Foreign Minister, has rightly pointed out:

‘The Cold War fostered client states whose repressive behaviour was often condoned in return for their loyalty to one or other camp. This was a particular paradox for the West. All too often it found itself in the pursuit of a proclaimed crusade for freedom shoring up regimes for whom freedom was not on the agenda.’<sup>4</sup>

As a matter of fact, the two superpowers intervened militarily across their spheres of influence. The United States intervened in the Dominican Republic (1965), Grenada (1983), and Panama (1989); the USSR intervened in Hungary (1956), Czechoslovakia (1968), and Afghanistan (1979). Moreover, both superpowers exerted political control over a number of satellite states, and whenever those states tried to escape from their hegemonic political influence they were restrained, sometimes by direct armed intervention, but usually through indirect intervention. The aforementioned

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<sup>4</sup> Robin Cook, ‘Foreign policy and national interest’, speech given at the Royal Institute of International Affairs, Chatham House, London, 28 January 2000.

military interventions were, therefore, also accompanied by indirect interventions using military assistance to local parties or covert actions. Furthermore, in the 'grey areas' outside their spheres of influence, the two superpowers competed for control over fragile states, often exacerbating local conflicts to that end. This was the case particularly in South-East Asia, Central America, and sub-Saharan Africa, where the United States and the USSR were either directly involved in armed conflicts or supported belligerents more or less overtly.

The Cold War was 'hot' in those areas of friction, as witnessed by conspicuous cases of intervention. Indeed, civil wars or wars by proxy fought for ideological reasons were the battleground of the superpowers. Whilst the Korean civil war was the first, the Vietnam war became the most significant and dramatic example for the West. The United States did not favour the holding of elections in Vietnam, as called for in the Geneva agreements of 1954, since this would have meant a communist victory. Instead, it sustained an unpopular and ineffective government whilst trying to organise a South-Vietnamese army that could confront the Vietcong forces already established throughout the country. The result was a progressive US commitment that led to the presence of over half a million troops by 1967, and a purposeless war until 1975. The contention that the American intervention was made for good reasons, i.e. containment, was employed to justify intervention on ideological grounds. Nevertheless, good intent cannot justify unrestrained military action. As one commentator on the Korean war pointed out: 'not many analysts dissent from the judgment that the United States was correct to oppose the violent incorporation of the South by North Korea. Most, however, question the wisdom of the US/UN forces moving north to liberate North Korea and thereby do in reverse what North Korea had failed to do by invading the South.'<sup>5</sup>

The fact that imperialistic and ideological aims coincided in most interventions during the Cold War did not prevent the existence of clear instances of *imperialistic* intervention. Regional powers cannot be considered hegemonic states, and yet they may conceal imperialistic intent. One example is Syria's intervention in Lebanon, when, as President Assad underscored in

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<sup>5</sup> The text is from an introduction to the Korean and Vietnam cases: Yuen Foong Khong, 'The US and East Asia: challenges to the balance of power', in Ngaire Woods (ed.), *Explaining international relations since 1945* (Oxford: Oxford University Press, 1996), p. 185.

his speech of 20 July 1976, Syria united two states that had been historically one country and one people.<sup>6</sup> Other instances of imperialist intervention were Libyan attempts to extend its territory towards the south. More extreme cases of imperialist intervention are better described as aggression, such as the Iraqi invasion of Kuwait in 1990. It seems more difficult, however, to find examples of intervention within the *ideological pattern* that were not absorbed into the broader Cold War pattern. Indeed, every attempt to uphold communism or democracy in other countries through the use of armed force was merely an extension of superpower confrontation. Naturally, substantive justifications for military intervention based on ideology were widely rejected. When the United States claimed that it was supporting military and para-military activities against Nicaragua to protect human rights and democracy, the International Court of Justice reflected a broadly shared view when in 1986 it stated: 'while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect.'<sup>7</sup>

A marked evolution of the *self-determination pattern* occurred after 1945. Through a series of resolutions, the UN General Assembly attributed a certain degree of legitimacy to the struggle for self-determination carried out by national liberation movements. Although there was not general agreement as to the extent of that legitimacy, some interpreted it to mean that colonised peoples were entitled to act militarily and to receive military support, including legitimate military intervention. Several newly independent countries, such as Algeria, and some communist countries, like Cuba, offered military assistance to liberation movements. However, it is not always easy to detach the zeal for self-determination felt by the interveners from what was the predominant environment of the inter-bloc confrontation. During the wars of independence against the colonial powers, and even more so once independence was achieved, foreign military intervention became intimately connected with the ideological divide. This was certainly the case in Angola. Until 1975, Cuban, South African, and Zairean military support for the various factions could be considered as intervention in favour of self-determination. However, after formal independence from

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<sup>6</sup> Charles Zorgbibe, *Histoire des relations internationales, vol. IV De 1962 à nos jours* (Paris: Hachette, 1995), p. 228.

<sup>7</sup> *International Court of Justice Reports*, 1986, Nicaragua case (merits), para. 268.

Portugal, military assistance represented Cold War-type intervention in a civil war with deep-rooted causes. At the same time, the evolution of the self-determination pattern meant the gradual but unequivocal termination of the *colonialist pattern*. Perhaps the most clear contemporary example of this was the Franco-British-Israeli intervention in the Suez Canal in 1956, on the grounds of defending economic interests. Indeed, the general condemnation that this intervention provoked marked the end of the traditional colonialist pattern.<sup>8</sup> Equally, another type of colonialist intervention, the annexation of territory by a neighbouring state, was also strongly rejected, as demonstrated by the international condemnation of South Africa's occupation of Namibia, and Indonesia's occupation of East Timor.

Some military interventions during the Cold War were a response to the need for territorial defence. The absence of effective control of neighbouring territory by a government, or a situation in which civil war threatened to spill over, led to some military interventions that could be included in the *self-defence pattern*. Indeed, during the Cold War, self-defence was the most respectable justification for the use of force, and intervening states used and misused this idea repeatedly to justify their acts.<sup>9</sup> Interventions by India in Bangladesh (1971), by Vietnam in Cambodia (1978), and by Tanzania in Uganda (1979) were praised recently as examples of humanitarian actions, but at the time the main argument used by intervening states was self-defence. Chad acted in self-defence against Libyan attacks on its territory in 1981. Therefore, French and Zairean military intervention to assist the Chadian government were actually acts of collective self-defence. Israel also pleaded preventive self-defence when it destroyed nuclear installations in Osirak (Iraq) in 1981 and when it occupied southern Lebanon, first from March 1978 and then from 1982 onwards. South Africa intervened in neighbouring countries in the mid-1980s to defend its own

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<sup>8</sup> In the wake of the failure of the Suez episode, and following the 1958 revolution in Iraq, the United Kingdom and the United States considered military intervention, but these plans were not carried out. The failure of previous interventions of this nature, and the reactions they produced, were a decisive factor in the decision. See Stephen Blackwell, 'A desert squall: Anglo-American planning for military intervention in Iraq, July 1958-August 1959', *Middle Eastern Studies*, vol. 35-3, July 1999, pp. 1-18.

<sup>9</sup> In this brief historical account, the fact that some cases are placed within the self-defence pattern does not necessarily imply that they are acceptable from a legal or moral point of view. For a critical assessment, see Chapter Five, section 2 below.

territory, and Turkey has argued regularly that it needed to act militarily in northern Iraq to prevent attacks from armed factions against its territory.

Finally, some interventions in the Cold War period could be seen as precedents of *humanitarian interventions*, which could give birth to a new pattern. While more remote precedents might be detected before 1945, the colonialist context denuded them of significance. More relevant precedents can be found in the 1970s, such as some operations to rescue nationals abroad. These precedents were not perceived, however, as indicative of a transformation under way in the legalistic principle of non-intervention, a development that was only to happen after the end of the Cold War, but the lack of general condemnation was an important indication of their acceptability in the eyes of international society.

The balance sheet of military intervention during the Cold War was quite negative, but the situation changed in 1990. Two factors marked the birth of a new international order from 1990: firstly, the fall of the Soviet empire, and secondly, Iraq's invasion of Kuwait, one of the most serious disruptions of the international *status quo* since the Second World War, which provided the right conditions for the effective functioning of the Security Council as a centralised organ for the maintenance of international peace and security. After resolutions were passed condemning Iraq's aggression, the basic agreement amongst the members of the Security Council, including the world's only remaining superpower, the United States, was for multilateral rather than unilateral action. This decision permitted bold collective intervention in many internal and international conflicts through a panoply of hitherto unheard-of instruments, such as peacekeeping operations, sanctions, state-building measures and the use of force. Against this background, states, major and regional powers alike, undertook very few military interventions during the 1990s. Moreover, the most conspicuous interventions were not made to uphold national interests, but to prevent humanitarian crises and to maintain international peace and stability, as was the case in Liberia in 1990, in Northern Iraq in 1991, in Kosovo in 1999, and in Sierra Leone in 2000. This evolution has led the principle of non-intervention to a new juncture at which the previous legalistic principle developed by the UN has been substituted by two new emergent principles: first, the *principle of collective intervention*, which recognises the right of the Security Council to intervene forcefully within states in crisis; and second, the *principle of limited intervention*, which allows military interven-

tion by states in other states under certain stringent conditions, examined in Chapter Five below, notably as a response to man-made humanitarian catastrophes.

*Collective intervention*<sup>10</sup> is a pattern (and principle) without precedent. Indeed, never before has a global organisation had the power to decide to act, in the name of international society, using coercive measures to regulate the behaviour of a particular government or even to decide how a state should be run. This new pattern of intervention has four important differences with respect to the other patterns described so far. Firstly, collective intervention is decided by the Security Council, a centralised organ, although it may be implemented by regional arrangements, states, or coalitions of states.<sup>11</sup> Secondly, collective intervention, by definition, does not pursue the national interests of major powers or of those who intervene, being conceived rather as a mechanism to uphold the global aims of the international community, and most notably to maintain or restore international peace and security. Thirdly, to attain the general, stated aim of collective intervention, the Security Council has not hesitated to intervene in the internal affairs of some states. In some cases, especially in Cambodia, El Salvador and Mozambique, the Security Council authorised a partial but substantive international administration of the country, including the organisation of elections. However, in these cases there was agreement with all the political forces involved, so such initiatives could not be construed as forceful interventions. In other instances, however, the Security Council also exerted what had been regarded hitherto as traditional state competencies, and they were accompanied by the use of force. In Bosnia, East Timor, Eastern Slavonia, Haiti, Kosovo, Rwanda and Somalia, an armed collective intervention was authorised by the Security Council, which implied international control over specific (parts of) states, at least for some time. Fourthly,

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<sup>10</sup> According to the classical terminology, collective action by the Security Council is not intervention, a term reserved for state-to-state interference. However, a central aspect of Security Council practice invites to use that term: forceful collective measures have been used to affect the traditional domestic jurisdiction of the state. Some authors also use the term 'collective intervention'. See, for example, Lori Fisler Damrosch (1993), and Christian Walter, 'Security Council control over regional action', *Max-Planck Yearbook of United Nations Law* (The Hague, London and Boston: Kluwer, 1997), vol. 1, p. 162.

<sup>11</sup> On Security Council delegation of powers, see Danesh Sarooshi, *UN and the development of collective security: the delegation by the UN Security Council of its chapter VII power* (Oxford: Clarendon, 1999).

the nature of the collective objectives also demanded a new approach to practical aspects of military intervention. The fact that a military operation was not that of a single state, and did not have the clear political purpose of overthrowing a government, posed original and complex problems. The operations in Somalia and Bosnia clearly illustrated that this type of military intervention, with the objective of stabilising the environment, confronted military forces with new challenges.

The development of a new pattern of *collective intervention* has been accompanied by an extraordinary diminution of intervention of the other patterns during the 1990s. In fact, nearly all of them have been abandoned and replaced by the *humanitarian pattern*, as is discussed below. Certainly, interventions of the *imperialistic pattern*, leaving aside the Iraqi aggression against Kuwait, have been almost non-existent. Some minor incursions have taken place in the Caucasus region, Nigeria unilaterally intervened in Liberia in March 1998, and there were sporadic Chinese attacks on some disputed islands in the South China Sea, which could be construed as examples of this type. Internecine strife in the Great Lakes region of Africa, however, has given way to some flagrant cases of military intervention. On the other hand, *ideological* reasons were also little employed by states as justification for military interventions during the 1990s. Military interventions of the *colonial* type have also been very rare, although the continued occupation of territories by some colonial powers, or the South African intervention in Lesotho in September 1998, could be considered part of the colonialist pattern. Also, the *self-determination pattern* was little used, since in conflicts in which one party claimed this right, such as Bosnia, Croatia, East Timor, Eritrea, Kosovo, Macedonia, Sri Lanka, or Western Sahara, external powers have generally exerted a sobering influence. Similarly, intervention for purposes of *self-defence* was equally infrequent during that period. Turkey has continued to argue that it had to act in northern Iraq to prevent attacks on its territory. For its part, Israel withdrew its forces from southern Lebanon in May 2000.

All in all, state-to-state intervention was less frequent during the 1990s than in previous decades. Partly because the only superpower, the United States, deterred such interventions and suppressed any interventionist temptation of its own, partly because the Security Council was able to act and partly because international public opinion no longer regarded such approaches as acceptable, states hardly intervened in other states for purposes of national

interest, which is remarkable in historical terms. In particular, the active presence of the Security Council as a forum for negotiation, or as a critical actor in deciding the methods for crisis management, along with the convergent stabilising efforts of regional organisations and states, undercut the basis for state-to-state intervention. It is obvious, however, that the fact that this was a productive decade for the Security Council was due to the willingness of the permanent members to act collectively, and in particular of the United States to act as a 'benign hegemon'.

Nevertheless, a new pattern, *punitive intervention*, saw the light of day in the late 1980s and was confirmed during the 1990s. The American air strike on Libya in 1986 was the first example. France, the United Kingdom and the United States enforced 'no-fly' (or 'air exclusion') zones in northern and southern Iraq until operation *Desert Fox* in December 1998, and afterwards only the United Kingdom and the United States continued to fly sorties against Iraq. The missile attacks by the United States against objectives Iraq in 1993 and against 'installations' in Afghanistan and Sudan in August 1998 constitute yet another example of this pattern. Although those isolated military attacks may seem reminiscent of colonial interventions, they belong to a new pattern because they are based on alleged previous international wrongdoings by the target states. This pattern poses specific problems that will be analysed in Chapter Five.

The scarcity of state-to-state interventions of traditional types in the 1990s stands in stark contrast to the fact that *humanitarian interventions* have been relatively frequent. On the one hand, a number of specific minor interventions (by, for instance, Belgium and France in Kinshasa, Zaire, in October 1991) to protect nationals in danger in other countries have not been censured by the international community, thus perpetuating a practice started in the 1980s. On the other hand, four sizeable humanitarian interventions to prevent humanitarian crises related to civil wars undertaken in the 1990s established a strong precedent. Firstly, ECOWAS (the Economic Community of West African States) decided to create a military force (ECOMOG) in August 1990, under Nigerian command, to intervene in Liberia's civil war. Secondly, in the aftermath of coercive action against Iraq in April 1991, but without express authorisation from the Security Council, some Western countries, under the leadership of the United States, carried out Operation *Provide Comfort* in northern Iraq. Thirdly, following the collapse of negotiations with the Federal Republic of Yugoslavia over



Kosovo, NATO member states decided to launch Operation *Allied Force* in March 1999 to prevent Serbian atrocities in Kosovo. Fourthly, the inability of UNAMSIL, the UN peacekeeping force in Sierra Leone, to accomplish its mission, and the taking of some of its members hostage, prompted a British intervention in that country in May 2000.

All of the above four military interventions were pretty much broadly accepted by the international community, and although they were launched without a prior mandate from the Security Council, they were legitimised by it in one way or another. It is obvious, however, that, owing to its size and scope, and to the difficult practical issues it raised, the intervention in Kosovo remains a puzzling case that demonstrated that a thorough reconsideration of the concept of intervention was needed.

Thus, during the 1990s the aggregation of collective military interventions authorised by the Security Council, together with the rarity of military interventions undertaken by states for imperialistic, ideological or colonial reasons, confirm that this period differs greatly from former epochs in the history of international relations. The difference is accentuated when one considers the salience of a new pattern of humanitarian intervention carried out by a small number of states but broadly accepted by the majority of the international community. More detailed analysis of the complex issues associated with the idea of military intervention is therefore called for.



# *Chapter Two*

## **INADEQUATE LEGAL RESPONSES**

Any exhaustive analysis of military intervention must necessarily investigate three dimensions of the problem: legality, legitimacy and political opportunity. In this chapter, an overview of the international legal norms regulating military intervention is presented, along with a discussion on the limits and flaws of such regulation. The legalistic principle of non-intervention is not expressly referred to in the UN Charter, being rather the product of several sources, such as the Charter itself, treaty law, international custom and General Assembly declarations, which represent customary law. It is generally understood that Article 2.4 of the Charter forbids any use of force in international relations, not only international war but also armed intervention in another state. Article 2.4. declares:

‘All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.’

There are only two valid exceptions to this general injunction – individual or collective self-defence (Article 51) and collective action taken by the UN Security Council having established the existence of a threat to the peace, a breach of the peace or an act of aggression (Articles 39-50). The Security Council may decide whether coercive measures should be executed by all members of the UN, or only by some of them (Articles 48 and 53). During the Cold War, these two exceptions evolved in different ways. The use and abuse of the veto prevented the Security Council from undertaking any substantial collective action until the 1990s, thereby blunting the main instrument for maintaining international peace that was envisaged by the Charter. This paralysis left self-defence as the only effective exception to the general ban. However, while there were some cases of justifiable self-defence, the concept was commonly exploited, leading to several attempts to embroider its meaning. Indeed, throughout the Cold War, illegitimate use of armed force in international relations and armed interventions were repeatedly justified on the grounds of spurious claims of ‘self-defence’ (normally closely connected to earlier alleged interventions, and often at the request of

‘legitimate governments’), which were not accepted by the international community as a whole.

Article 2.7 of the UN Charter effectively prevented the Organisation from intervening in matters that were essentially within the domestic jurisdiction of any state. The provision has nevertheless remained ambiguous, since there is no indication of what is to be understood by ‘domestic jurisdiction’. The Permanent Court of International Justice (PCIJ), interpreting a similar provision in the Pact of the League of Nations, made some useful remarks that are still considered authoritative. The PCIJ affirmed that the scope of ‘domestic jurisdiction’ should not be determined solely by the states, but should be defined ‘within the limits fixed by international law’. ‘The question whether a matter is solely within the domestic jurisdiction of the state is a relative question, the answer to which depends on the development of international relations’, the Court stressed.<sup>12</sup> During the Cold War, a number of decisions by UN organs showed that the *domaine réservé* was slowly shrinking, and in particular could no longer apply in cases of colonial administration or racial discrimination. Another important element in interpreting Article 2.7 is Security Council practice during the 1990s, as mentioned above. Action taken under Chapter VII is expressly excluded from domestic jurisdiction as referred to in Article 2.7, therefore states cannot allude to the principle of non-intervention whenever the Security Council decides, in conformity with Article 39 of the UN Charter, that a threat or a breach to international peace and security has occurred (even if this threat or breach was not provoked by an international conflict but by an internal situation), and that measures have to be adopted as a result. In this respect, it seems clear that Security Council actions have redefined the concept of both ‘domestic jurisdiction’ and ‘international peace and security’, as far as the relationship between the Security Council and states is concerned.

Articles 2.4 and 2.7 of the UN Charter, as well as other purposes and principles described in it, have been generally interpreted in the light of General Assembly Resolution 2625 (XXV), the Declaration on Principles of International Law concerning Friendly Relations and Cooperation, adopted by consensus in 1970 and widely recognised as a valid development of the

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<sup>12</sup> Case ‘National Decrees Issued in Tunis and Morocco’ (1923), *PCIJ Series B*, no. 4, p. 24.

Charter's provisions.<sup>13</sup> The Declaration contains the following principle of non-intervention:

'No state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. 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 in violation of international law . . . Every state has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another state.'

In spite of general support for the Declaration, the equal condemnation of both 'armed intervention' and 'other forms of interference' led to criticisms from several Western countries.

The principle of non-intervention was also introduced in bilateral and multilateral treaties, thereby reaffirming its applicability in specific relationships or geographical regions, thus adding to its general value. Moreover, the principle was also endorsed by the Helsinki Final Act of 1975 in the following clear terms:

'The participating states will refrain from any intervention, direct or indirect, individual or collective, in the internal affairs falling within the domestic jurisdiction of another participating state, regardless of their mutual relations. They will accordingly refrain from any form of armed intervention or threat of such intervention against another participating state.'

Although the Helsinki Final Act is a political agreement, not a binding treaty, it is generally recognised that the principles embodied in the Final Act are compulsory for the participating states. In the Paris Charter for a New Europe of 1990, adopted in the framework of the CSCE, and in the Budapest Document of 1994, creating the OSCE, states undertake to act according to the principles of the Helsinki Final Act. For its part, Article 11

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<sup>13</sup> General Assembly resolutions have only a recommendatory value, but it is accepted that some important resolutions, called declarations and widely adopted on special occasions, represent an authoritative restatement of international law, for instance the Universal Declaration of Human Rights of 1948.

of the TEU, a provision that will be commented on in Chapter Six below, states that one of the three objectives of the European Union's CFSP is:

‘to preserve peace and strengthen international security, in accordance with the principles of the UN Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders.’

To complete this synopsis of the status of non-intervention in current international law, two other issues should be mentioned – intervention in civil wars and intervention in wars of colonial liberation. In the first case, there are no definitive written rules, so the customary norms apply even if their exact contents are disputed. The customary rule in classical international law was that in civil wars other states could assist the legitimate government, but not the rebels. This rule was subject to doctrinal criticism and abuse in practice during the Cold War, for it depended wholly on recognition of the ‘legitimate’ government, and recognition of governments is a political decision taken by states. Consequently, the superpowers intervened in different ways in civil wars, supporting what they considered to be the ‘legitimate’ government. For this reason, a new norm was drawn up, in keeping with the principles of non-use of force and non-intervention, according to which international law forbids military assistance to either side in a civil war. The Declaration on Friendly Relations of 1970 contains a distinctive manifestation of this new rule:

‘no state shall organise, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state, or interfere in civil strife in another state.’

With regard to wars of colonial liberation, third world countries, as well as communist countries, maintained the view that the colonial peoples had the right to fight against occupation. Thus, foreign armed help to those under colonial occupation was not intervention but legitimate assistance of self-defence. This view was reflected in the Declaration on Principles of 1970 (and in other General Assembly resolutions, often even more controversially).<sup>14</sup> However, this argument was only applicable to colonial self-

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<sup>14</sup> ‘The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention’ (Declaration on Princi-

determination, and could not 'be construed as authorising or encouraging any action which would dismember or impair . . . the territorial integrity or political unity of sovereign and independent States.'<sup>15</sup>

The various written and customary norms of international law considered in the last few pages present a principle of non-intervention that was both too strict and too inflexible but which was nevertheless the legal regulation that prevailed until the 1990s. During the last decade, however, a conviction emerged among scholars, the public and states alike that some cases of intervention were justified, even if international law did not formally acknowledge that right. As early as the 1980s, some experts on international law conceded the dilemma when they reckoned that some punctual humanitarian interventions were legitimate even though in theory proscribed by international law.<sup>16</sup> Incidentally, the debate over humanitarian intervention was started almost at the same time as another debate on the possibility of legitimate intervention in support of democracy, which did not generate the same consensus.<sup>17</sup> At an academic level, the counter-restrictionists started to outnumber the restrictionists (authors who advocated maintaining the prohibition on intervention in all circumstances).<sup>18</sup> Thus, the growing tension between the legitimacy and legality of intervention became clear at the end of the 1990s, not only to scholars but also to public opinion and governments. Indeed, that tension was indicative of the process of change in international law that was under way. International law, especially rules of a customary nature, normally lag well behind political, moral and social developments. International law has its own rules for change, their purpose being to double-check that general sentiment towards legitimacy and political evolutions remains constant. In those transitional periods, interna-

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ples of 1970). GA Resolution 2621 of 1970, and Resolution 3314 of 1974 (Article 7) did not receive the same support as the Declaration on Principles.

<sup>15</sup> On this aspect, see, *inter alia*, Albrecht Randelzhofer, 'Use of force', in *Max Planck Encyclopaedia of Public International Law*; and 'Article 2(4)', in Bruno Simma (ed.), *The Charter of the United Nations, A Commentary* (Oxford: Oxford University Press, 1995).

<sup>16</sup> Some scholars on international law (see works by Ronzitti and Teson in the bibliography) started to express their concern over the scope of the principle, which was criticised primarily because it rejected rescue of nationals abroad and some humanitarian intervention.

<sup>17</sup> On 'democratic intervention', see Chapter Five, section 2, below.

<sup>18</sup> This distinction is explained by Oliver Ramsbotham, 'Humanitarian intervention 1990-1995: a need to reconceptualize?', in *Review of International Studies*, 1997, p. 450.

tional law can be somewhat contradictory because it must strike a balance between old and new values.

Three significant juridical factors have influenced the evolution of the rules of international law concerning non-intervention. First, consistent, albeit not very frequent, military interventions that were not regarded as illegal by states, and consequently, were not condemned by the international community. These can be further divided into two types: military operations to rescue nationals abroad (Entebbe 1976, Mogadishu 1977, Zaire 1991); and military actions to stop civil wars and prevent humanitarian crises (Bangladesh 1971, Uganda 1978, Cambodia 1979, Central Africa 1979, ECOMOG in Liberia 1991, Iraq 1991, Kosovo 1999 and Sierra Leone 2000). Whilst the circumstances in all of these cases were by no means identical, the perception that they were acceptable necessitated their establishment in international law. The second factor is the evolution of international law during the 1980s and 1990s towards the 'internationalisation' of the protection of human rights, which thereby removed them from the domestic jurisdiction of states. In the 1970s and 1980s, for instance, it was agreed that the apartheid regime in South Africa was not an internal issue but an issue of concern for international society at large. Towards the end of the 1980s, other humanitarian crises gradually became sources of concern for the international community. UN General Assembly Resolutions 43/131 (8 December 1988), 45/100 (14 December 1990), on 'Humanitarian assistance to victims of natural disasters and similar emergency situations' and 46/182 (19 December 1991) on 'Strengthening the coordination of humanitarian emergency assistance' reaffirmed the sovereignty of affected states and their primary role in the implementation of humanitarian assistance, but they established the concept of 'non-forcible humanitarian intervention'.<sup>19</sup> In the same vein, the reinforcement of UN organs dealing with human rights following the Vienna Conference on Human Rights of 1993 included the appointment of a new High Representative. Equally, in a number of resolutions, the Security Council drew a 'causality link' between humanitarian crises and international peace and security. In Europe, the protection of basic human rights and minorities was given greater emphasis by the Council of Europe and the CSCE/OSCE. In particular, OSCE documents made it clear that commitments to human rights were 'of direct and legitimate concern to all participating States and did not belong exclusively to the

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<sup>19</sup> Ibid, p. 457.



internal affairs of the State concerned.<sup>20</sup> Third, resolute Security Council action in the 1990s to prevent humanitarian crises, restore peace in states torn by civil strife and rebuild societies also laid the ground for a reformulation of the principle of non-intervention. The Security Council not only agreed concrete measures that would help alleviate humanitarian crises, but also decided to reinforce respect for humanitarian law by creating, in the aftermath of several conflicts (including former Yugoslavia and Rwanda), international criminal courts.

These three developments did not in themselves directly transform the legalistic principle of non-intervention, although they did create a general atmosphere favourable to the incorporation of humanitarian interventions into international law. However, the legal situation at the end of the 1990s was still rather unclear. Interventions in the 1990s had been mainly of a collective nature, and there were few cases that could be used to verify whether state-to-state interventions were more or less acceptable than had been the case hitherto. Against that background, on 24 March 1999, NATO's intervention in Kosovo therefore came as a shock to international legal theory, bringing the growing divergence between perceived legitimacy and legality to a head. In the face of Operation *Allied Force*, the prevailing attitude among jurists was clearly contradictory, i.e., whilst the intervention was not legal according to the existing rules of international law, it was obviously justified because of the impending humanitarian catastrophe, the Serb's reluctance to respect basic human rights and the risk of regional destabilisation.

The legal debate over Kosovo reflects the confusion in international law at its starkest. There are two ways to sort out this contradiction. The first involves the search for legal justification in present international law; the second involves proposing immediate changes in international law to take account of the perceived legitimacy of some interventions. According to the first option, present international law contains sufficient precepts to render NATO's Kosovo operation legal. To support this jurists use a panoply of legal arguments to justify intervention, among which the most frequently cited are as follows:

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<sup>20</sup> CSCE 1992 Helsinki Summit Declaration, para. 8, following the CSCE Moscow Document of 1991.

- Article 2.4 of the UN Charter tacitly permits interventions that are not directed against the ‘territorial integrity or political independence’ of a state and are not ‘inconsistent with the purposes of the UN’;
- The Security Council has the primary responsibility but not the only responsibility for the maintenance of international peace and security, according to Article 24 of the UN Charter;<sup>21</sup>
- In exceptional cases, an overwhelming humanitarian catastrophe creates a ‘state of necessity’ that could justify intervention;<sup>22</sup>
- UN Security Council Resolutions 1199 and 1203, adopted under Chapter VII, imposed obligations upon the FRY, including the requirement to ‘cease all action by the security forces affecting the civilian population’, that were not honoured;<sup>23</sup> and
- NATO’s action was subsequently implicitly legitimised by Security Council Resolution 1244 of 10 June 1999.

However, from a purely legal viewpoint, all these arguments are not very convincing. The first two points are subjects of a well-worn controversy, and are only supported by a few international legal scholars, and certainly not openly by any single state. The main problem regarding the third point is that it has the logical structure of an exception rather than a norm, and this is not very useful from a legal point of view. In fact, necessity is a recognised excuse by which otherwise illegal actions avoid being condemned as illegal. This excuse does not, however, facilitate effective assessment of what is a ‘humanitarian catastrophe’, and thus a clear understanding of when individual states are allowed to act. In addition, as Adam Roberts points out, ‘the motives for the NATO military action included many elements, which were not purely humanitarian, and not exclusively concerned with Kosovo.’<sup>24</sup> The fourth point, which was expressly utilised by several NATO

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<sup>21</sup> These old arguments are criticised (and discarded) in *Danish report*, p. 28. Nevertheless, they have been recently re-utilised by some scholars: see Serge Sur, ‘Le recours à la force dans l’affaire du Kosovo et le droit international’, *Les notes de l’IFRI*, N. 22, Paris, octobre 2000.

<sup>22</sup> The British government argued explicitly in this direction: British memorandums of October 1998 and January 1999, quoted by Adam Roberts, in *Survival*, Autumn 1999, p. 106, note 6.

<sup>23</sup> Ministère de la Défense français, *Les enseignements du Kosovo*, Paris, novembre 1999, p. 27; US Department of Defense, *Final Statement on Kosovo*, Washington, 1999, p. 10.

<sup>24</sup> Adam Roberts, ‘NATO’s “humanitarian war” over Kosovo’, in *Survival*, Autumn 1999, vol. 41-3, p. 108.

members, has, nonetheless, little legal substance, since many Security Council resolutions imposing compulsory measures under Chapter VII have been passed, and no one can reasonably maintain that they imply an automatic right to resort to armed force in the event of non-compliance. Nevertheless, the fifth point does enjoy some legal strength, since Resolution 1244 permits a military presence in Kosovo based upon a previous military intervention. Yet *ex post facto* legitimation by the Security Council is not in itself a rule of international law that could adequately define the legality of military interventions, for it does not give prior indication of when an intervention might be undertaken.

A second approach has been to present proposals for immediate changes in international law that would take into account the overwhelming legitimacy of certain interventions. The perceived need to transform existing international legal rules on intervention has prompted some imaginative proposals from international lawyers and experts. In what was a timely work, Winrich Kühne suggested that the Security Council should produce an extended mandate for regional security organisations authorising them to intervene for humanitarian reasons whenever the Council is unable to act.<sup>25</sup> Another recent study by Barend ter Haar proposes the adoption of a UN General Assembly resolution by as large a majority as possible in order to establish a framework for humanitarian intervention that could be employed by both the Security Council and states.<sup>26</sup> It does seem, however, that both the theoretical difficulties concerning the concept of intervention and the political divide amongst states, which will be examined in the next chapter, would prevent a written reformulation of international legal rules in the foreseeable future. Therefore, proposals that claim to modify the present regulation (*de lege ferenda*) are not really apposite.

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<sup>25</sup> Winrich Kühne, *Humanitäre NATO-Einsätze ohne Mandate? Ein Diskussionsbeitrag zur Fortentwicklung der UNO-Charta* (Ebenhausen: SWP, March 1999). See also Chantal de Jonge Oudraat, *Intervention in internal conflicts: legal and political conundrums* (Washington, DC: Carnegie Endowment for International Peace, August 2000), which in note 30 mentions several recent works in which academics lay out the conditions for lawful interventions.

<sup>26</sup> Barend ter Haar, *Peace or human rights? The dilemma of humanitarian intervention* (Clingendael: Netherlands Institute of International Relations, August 2000), Chapter 9.

What is really at stake, after the remarkable developments in the 1990s, is the transformation of the very principle of non-intervention, not just the modification of the legal rules that gave concrete form to the legalistic principle prior to the end of the Cold War. Accordingly, a proper reconsideration of the problem of military intervention cannot be undertaken from an exclusively legal point of view. Caught between two versions of the principle, international law can only give partial answers. A proper reconsideration of the issue must be directed towards a description of the new principle, and must therefore be undertaken taking into account the full range of relevant dimensions, i.e., not only legality but also legitimacy and the political assessment of whether military intervention is opportune. Following this chapter, Chapter Three looks at legitimacy, and Chapter Four considers the political issues raised by military intervention, which will lead to the definition of the new principle of limited intervention in Chapter Five.

A new principle will gradually give birth to a new legal regulation. However, in the meantime, what is the current state of international legal norms? Admittedly, those norms are in a state of flux, but what would a snapshot of those changing norms look like? The Yugoslav government presented an opportunity to the International Court of Justice to determine the exact content of those norms when, on 29 April 1999, in an audacious move, the FRY instituted proceedings against ten NATO member states, accusing them of bombing Yugoslav territory in violation of their obligation not to use force against another state. The FRY maintained that not only had those states disregarded their obligation not to intervene in another state's internal affairs, thus violating its sovereignty, but that they had also failed in their obligation to protect both the civilian population and civilian infrastructure in time of war, as well as damaging the environment. Thus, the FRY demanded that provisional measures be undertaken by the Court forcing those states to cease their use of force immediately. On 2 June 1999, the ICJ decided that, because it manifestly lacked jurisdiction over two of the ten controversies, and because in principle it lacked jurisdiction over the other eight, it would not rule provisional measures.<sup>27</sup> Nevertheless, the Court did decide that it would carefully consider its capacity to act in the eight cases, and thereafter fixed a time limit for presentation of written arguments by

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<sup>27</sup> See [www.icj-cij.org](http://www.icj-cij.org). The Court dismissed the cases against Spain and the United States, yet decided to examine cases against Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal and the United Kingdom.

Yugoslavia, as well as the respondent states.<sup>28</sup> The ICJ functions according to a system of consensual jurisdiction, which means that before considering the merits of any case it has to verify that the parties have given their previous consent to the ruling of the Court. Having preliminarily rejected its own jurisdiction on 2 June 1999, it is unlikely that the Court will decide that it does indeed have jurisdiction once it completes its in-depth judgement. It is also possible that the FRY will withdraw its case. However, if the Court does eventually consider the case on its merits, it will certainly not analyse the transformation of the principle of non-intervention. Normally, whilst the ICJ makes some general considerations *obiter dicta* on principles of international law, it invariably bases its decisions on positive sources of international law, such as treaties and custom, according to Article 38 of its Statute. The Court could not conceivably maintain that a new custom was in place in March 1999. Even so, one possible outcome would be to rule that a custom that does not contradict the UN Charter was in the making. There are enough arguments extant to claim that a customary rule is developing, which could allow humanitarian military interventions by states in particular circumstances.<sup>29</sup> Prior to the 1990s (Bangladesh 1971, Uganda 1978, Central Africa 1979) practice was not accompanied by a general belief that states were acting according to international law (*opinio iuris*), whereas recent practice (ECOMOG 1991, Iraq 1991, Kosovo 1999) was in the belief that such acts took place within the framework of international law, and this has been recognised by the majority of the international community. Britain's intervention in Sierra Leone beginning in May 2000 has further reinforced this argument.

In sum, the rules of international law concerning military intervention are still based on the legalistic principle of non-intervention elaborated between 1945 and the end of the Cold War. In the 1990s, however, these norms started to change quite radically as a consequence of UN Security Council

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<sup>28</sup> The Court decided that Yugoslavia should submit its first written memorial not later than 5 January 2000, and that the eight respondent states should each submit a counter-memorial not later than 5 July 2000. In September, the Court fixed April 2001 as the time limit for Yugoslavia to present written statements on the counter-memorials. As of December 2000, none of those documents had been put in the public domain. See [www.icj-cij.org](http://www.icj-cij.org).

<sup>29</sup> Many studies have considered the legal aspects of the Kosovo intervention. See, for instance, the debate in *American Journal of International Law*, vol. 93-4, October 1999.

practice and enhanced international protection of human rights. Following several celebrated cases of state-to-state humanitarian intervention, especially Kosovo, international law has no clear responses to the issue. Present international law regulation reflects the transitional process in which a strict legalistic principle of non-intervention is giving way to a more permissive principle of limited intervention. Therefore, the exact content of international law will only be established once the new principle has been more clearly defined. In this dynamic process, however, it is already possible to identify the creation of a custom permitting military intervention for humanitarian purposes under stringent conditions, which was 'crystallised' by the Kosovo intervention (i.e. this intervention confirmed the birth of the custom).

# Chapter Three

## THE LEGITIMACY OF MILITARY INTERVENTIONS

To analyse the legitimacy of military interventions, this chapter introduces first a list of cases that have generally been regarded as legitimate. It is not sufficient, however, simply to affirm that some interventions were legitimate, because any assessment of legitimacy must be based on rational grounds. Therefore, an approximate definition of legitimacy is presented, and the sources that have contributed to this concept are discussed: (1) the academic community; (2) public opinion, the media and NGOs; (3) states considered individually; (4) state consensus; and (5) international organisations.

### III.1 Cases of legitimate intervention

A number of recent military interventions having a strong humanitarian element have been widely accepted. Using a preliminary and purely intuitive approach for the time being, the following eight historical cases can be considered as having been legitimate.<sup>30</sup>

- *India's intervention in East Pakistan, November 1971.* Civil war in East Pakistan led Pakistani forces to commit serious violations of human rights and to force some 10 million refugees into Indian territory. Full-scale military intervention by India put an end to the humanitarian catastrophe, allowed the return of refugees, and stimulated the creation of a new independent state, Bangladesh, before the withdrawal of Indian troops. The intervention was not immediately accepted by the international community, owing to the support that the Soviet Union had provided to the Indians, but it was generally acknowledged later as a clear example, and thus precedent for humanitarian intervention. One of the most eloquent defences of this precedent was made by Michael Walzer, who pointed out that the Indian armed forces were in and out of the country quickly, that they defeated the Pakistani army but did not replace it, and that they

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<sup>30</sup> Other lists of legitimate interventions may be found in the works by Arend & Beck (1993), pp. 112-37; Teson (1988), pp. 155-200; Akehurst (1984), pp. 95-9; Verwey (1985), pp. 357-70; and in *Danish Report* (pp. 88-93), mentioned in the bibliography.

imposed no political controls on the emergent state. His conclusion is that 'the intervention qualifies as humanitarian because it was a rescue [of a people being massacred], strictly and narrowly defined.'<sup>31</sup> It is now uncontested that the intervention was necessary to stop a humanitarian catastrophe.

- *Vietnam's intervention in Cambodia, December 1978.* From April 1975, when the Khmer Rouge acceded to power in Cambodia, indescribable atrocities were committed by what was a politico-military sect against the Cambodian population. Their hostility vis-à-vis Vietnam resulted in several incursions into this country's territory, which eventually provoked a counter-invasion in December 1978. Thereafter, Vietnamese forces occupied most of Cambodia, and stayed in control for ten years. Again, Cold War politics led to condemnation by the UN General Assembly of Soviet-backed Vietnam and, consequently, the Khmer Rouge representative sat for ten years in the UN. More recently, however, a more balanced assessment of that intervention has been undertaken. Barend ter Haar points out that the political situation in the region 'so shortly after the fall of Saigon' left the West with no other option than to criticise Vietnam strongly. Moreover, the extension of communist power in South-East Asia was still a fear in Western capitals. However, for the same expert: 'It cannot be denied that the human rights record of Vietnam itself was very bad, but neither can it be denied that the Vietnamese invasion put an end to the Cambodian massacres and that Vietnam has not, as was feared, misused the invasion to occupy Cambodia permanently. On balance and in retrospect, the Vietnamese invasion therefore seems justified.'<sup>32</sup>
- *France's intervention in Central Africa, 1979.* For fourteen years, the self-styled 'emperor' Jean-Bedel Bokassa had established a despotic regime in the Central African Republic that was increasingly oppressive towards its own citizens. Reports of grave violations of human rights, including a massacre of students, led the French to intervene in 1979, following requests by some African countries that had suffered from Bokassa's provocations. In this case, as Louis Balmond affirms, the re-

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<sup>31</sup> Michael Walzer, *Just and Unjust Wars* (New York: HarperCollins, 1977), p. 105.

<sup>32</sup> Barend ter Haar (2000), pp. 21-2. The previous quotation is from the same author, p. 21.



versal of the humanitarian situation required a change in the leadership.<sup>33</sup> Actually, the operation was criticised by only a few states, but nowadays the French intervention is regarded as having been a just humanitarian intervention.

- *Tanzania's intervention in Uganda, 1979.* From 1971, Idi Amin's eight-year rule over Uganda sanctioned extensive torture and murder of ethnic rivals, and the expulsion of the large Asian minority. Following frontier skirmishes in October 1978, Tanzanian troops entered Ugandan territory, captured the capital Kampala in April 1979 and forced a change of government. The intervention, which was justified on the grounds of self-defence, was condemned by only a few countries. Although international leaders who now support the idea of humanitarian intervention are generally reluctant to cite precedents, Kofi Annan has highlighted the Tanzanian action in Uganda and the Indian intervention in East Pakistan as two valid examples.<sup>34</sup>
- *ECOMOG intervention in Liberia, 1990.* The most effective attempt at ending civil war in Liberia came as a result of pressure from ECOWAS, which resulted in the creation of a military monitoring group (ECOMOG) in August 1990, which finally brokered a political agreement between the warring factions in October 1990. Implementation of the peace agreement required the strengthening of ECOMOG by up to 12,000 troops, 80 per cent of them coming from Nigeria. The UN Secretary-General advised the Security Council to support the agreement and the force, which was endorsed by the neighbouring states who also asked for an increased UN presence. However, the Security Council declined. As Winrich Kühne has put it, 'the Americans, busy with Saddam Hussein, were reluctant to get involved. [As] were the three African members of the Security Council . . . although they later changed their minds.'<sup>35</sup> The deterioration of the

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<sup>33</sup> Louis Balmond, 'Les fondements juridiques des interventions militaires françaises en Afrique', in Louis Balmond (ed.), *Les interventions militaires françaises en Afrique* (Paris: Pedone, 1998), p. 20. See also John Chipman, 'French military interventions in Africa', *Adelphi Paper* 201, 1985.

<sup>34</sup> Kofi Annan, speech at the Ditchley Foundation, 26 June 1998.

<sup>35</sup> Winrich Kühne, 'Lessons from peacekeeping operations', in Winrich Kühne, Guido Lenzi & Alvaro Vasconcelos, 'WEU's role in crisis management and conflict resolution in sub-Saharan Africa', *Chaillot Paper* 22 (Paris: Institute for Security Studies of WEU, December 1995), p. 38.

situation, which led to about 150,000 deaths and 700,000 refugees, and lack of compliance with the agreement, led ECOMOG to undertake full-scale military intervention. Finally, the Security Council decided, on 19 November 1992, to impose an arms embargo against the factions and to call upon the Secretary-General to appoint a Special Representative. Security Council Resolution 788 welcomed efforts of ECOWAS to restore peace in Liberia. Thereafter, Security Council Resolution 866 established UNOMIL in September 1993 to work with ECOMOG to implement a new peace agreement that had been signed in Cotonu two months earlier. Hence, *ex post facto* legitimation by the Security Council endorsed previous regional efforts, including ECOMOG military intervention. At the same time, concerns about the impartiality of the Nigerian-led ECOMOG were eased through the presence of a UN force.<sup>36</sup>

- *Operation Provide Comfort, 1991.* Immediately after the collective action against Iraq, and the imposition by Security Council Resolution 687 of a wide range of sanctions, it became clear that Saddam Hussein's armed forces were about to carry out repressive military operations against the Kurdish population in northern Iraq. Consequently, the Security Council adopted Resolution 688 (5 April 1991) in which it 'condemns the repression of the Iraqi civilian population . . . the consequences of which threaten international peace and security in the region', and 'insists that Iraq allow immediate access by international humanitarian organisations to all those in need of assistance.' To this end, the Security Council 'appeals to all Member States and to all humanitarian organizations to contribute to these humanitarian efforts.'<sup>37</sup> Legally speaking, the Resolution, which was not adopted under Chapter VII of the Charter, was not an explicit authorisation of the use of force, although it amounted to what might be termed a quasi-authorisation, especially if interpreted in its political context. As the *Danish Report* puts it, the intervention was 'regarded by the world community as somehow emanating from the authority of the Security Council'.<sup>38</sup> Thirteen governments decided to send troops to Northern Iraq, with major participation from France, the United Kingdom and the United States, under US leadership. Some states criti-

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<sup>36</sup> See Marc Weller, *Regional peace-keeping and international enforcement: the Liberian crisis* (Cambridge: Cambridge University Press, 1994).

<sup>37</sup> The Resolution was adopted by ten votes to three (Cuba, Yemen and Zimbabwe), with two abstentions (China and India).

<sup>38</sup> *Danish Report*, p. 92.

cised the action, explicitly or implicitly, in the 1991 session of the UN General Assembly, but they were just a minority.<sup>39</sup> Undoubtedly, the action helped to prevent a humanitarian catastrophe, and recent reassessments of the case reinforce this perceived legitimacy.

- *NATO intervention in Kosovo, March-June 1999.* The Kosovo case is referred to throughout this paper, and its details are already well established. However, a preliminary assessment of its legitimacy must be also undertaken herein. NATO member states decided to launch Operation *Allied Force* on 24 March 1999 without a mandate from the Security Council because they knew beforehand that a veto would have impeded an enabling resolution. Nevertheless, three elements assure, in principle, the intervention's legitimacy. First, the operation was decided upon and undertaken by an alliance of 19 member states, which represents 10 per cent of the total membership of the UN. Second, the intervention was expressly endorsed by all 42 states participating in the Washington NATO summit of April 1999. Third, the intervention was later implicitly legitimised by Security Council Resolution 1244 of 10 June 1999, whereby the Security Council imposed upon the FRY a demand for the withdrawal from Kosovo of all its forces, and established an 'international security presence', together with an 'international civil presence' in Kosovo having wide responsibilities. It is clear that the Security Council's decision was essentially founded upon NATO's use of force. Moreover, the refusal of the Security Council to endorse a draft resolution presented by Russia on 26 March 1999 was also meaningful. Whilst requesting the cessation of the use of force by NATO, the draft was only voted by three members: China, Namibia, and Russia. At the end of 1999, the General Assembly embarked upon a general discussion about intervention, yet only a few countries explicitly condemned NATO's action in Kosovo.
- *British intervention in Sierra Leone from May 2000.* The Lomé peace agreement of July 1999 sought an end to civil war in Sierra Leone through a range of limited political concessions to the Revolutionary United Front (RUF). Security Council Resolution 1289 (7 February 2000), noted the withdrawal of ECOMOG forces, which had made an 'indispensable contribution towards the restoration of democracy and the

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<sup>39</sup> Sean D. Murphy, *Humanitarian intervention* (Philadelphia: University of Pennsylvania Press, 1996), p. 193.

maintenance of peace, security and stability', and reinforced the UN force, UNAMSIL. At the beginning of May 2000, RUF rebels returned to the arms and attacked UN forces, detaining about 500 of its members, thus breaking the agreement. The United Kingdom decided to intervene with four stated objectives: to protect and evacuate around 500 British nationals, to secure the use of Freetown airport, to provide technical advice to UNAMSIL, and to help stabilise the situation in Sierra Leone.<sup>40</sup> Whilst British statements made it clear that the forces were not sent to intervene in the civil war, and that the best way to secure stability in Sierra Leone was to reinforce the UN multinational force, the British government also said that the presence of UK troops would contribute to easing the enormous suffering of the people of Sierra Leone. Security Council Resolution 1299 (19 May 2000) endorsed the efforts undertaken by the British government to reinforce the UN force.<sup>41</sup> There is no express reference to the British intervention in SC resolutions, although the subsequent series of resolutions implies a synergy between British efforts and Security Council decisions. In particular, Resolution 1306 (imposing a regime for trade in rough diamonds from Sierra Leone, and reinforcing the arms embargo of Resolution 1171), and Resolution 1315 (authorising an independent criminal court in agreement with the government of Sierra Leone) illustrate the coincidence of policy. So far, no state has criticised Britain's intervention.

There are important differences concerning legitimacy between the first four cases (in the 1970s) and the last four (in the 1990s and in 2000).<sup>42</sup> The first

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<sup>40</sup> It is interesting to note how the aims of the operation are described in increasingly wider terms, from safeguarding nationals, at the beginning, to reinforcing UN forces, to improving the humanitarian situation. Compare statements made by Robin Cook (8 May), and Geoffrey Hoon (15 May) in the House of Commons, and Tony Blair's statement of 19 May.

<sup>41</sup> In paragraph 2 of Resolution 1299, 'the Security Council expresses its appreciation to all states who, in order to expedite the rapid reinforcement of UNAMSIL, have accelerated the deployment of their troops to UNAMSIL, made available additional personnel, and offered logistical, technical and other forms of military assistance, [emphasis added] and calls upon all those in a position to do so to provide further support.'

<sup>42</sup> The four-power intervention in Lebanon from August 1982 could be also regarded as a legitimate intervention, although this case is more controversial than the others. At any rate, it was well intended, with a strong humanitarian component (following the massacres in the Sabra and Chatila refugee camps), as well as a strategic component (to avoid an open confrontation between Israel and Syria in Lebanon).

four were not made for humanitarian reasons, but rather (with the exception of France's intervention in Central Africa) for self-defence, and launched by individual states. The last four were provoked by civil strife and resultant humanitarian crises, and were undertaken by coalitions of states (except in Sierra Leone). Moreover, the legitimacy of all four interventions in the 1970s was only recently conferred, whilst the last four instances were expressly recognised as the legitimate use of force by the majority of the international community at their outset. Equally, the last four were directly linked with Security Council decisions. However, in spite of the many differences, all eight cases help in the definition of legitimacy.

### **III.2 Building blocks of legitimacy**

Nevertheless, it must be recognised that the legitimacy of those cases has been assessed thus far on a purely intuitive basis, being based on references to a range of various sources, authors, state declarations, Security Council decisions, etc. This raises the central question that has yet to be tackled: *what is 'legitimacy'?* *Why* do those cases represent legitimate interventions while other interventions may be qualified as illegitimate? In this paper, legitimacy of military interventions is defined as *the general conviction among a distinct majority of the international community that the use of armed force is correct and acceptable*. The approach employed is thus approximate and consensual.<sup>43</sup> The legitimacy of a given military intervention cannot be defined by any high tribunal or international organisation. General acceptance implies rather the confluence of positive assessments from the various international actors. Therefore, as understood here, *legitimacy* should be distinguished from the *morality* of a particular use of force, which is an assessment made by moral philosophers employing the just war theory, utilitarianism, and other moral theories.

Legitimacy is thus the approximate aggregation of the acceptance by various international actors, which may be considered the foundation or *building blocks* of legitimacy. These building blocks must, therefore, be identified

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<sup>43</sup> There are not many definitions of legitimacy in international relations. See, however, Ian Hurd, 'Legitimacy and authority in international politics', in *International Organisation*, 1999, vol. 53, pp. 379-408; and Gülnur Aybet, *A European security architecture after the Cold War. Questions of legitimacy* (London: Macmillan, 2000), commented on in Chapter Five, section 3 below.

and considered separately. They include: (1) the academic community; (2) public opinion, the media and NGOs; (3) states considered individually; (4) state consensus; and (5) international organisations. However, the idea that legitimacy rests on a number of building blocks obviously does not suggest a magic mathematical formula. Rather, by offering a critical checklist, it contributes to a rational and exhaustive analysis of the various elements that help define legitimacy.

### ***The academic community***

Evolving scholarly opinion in the fields of international law, international relations and moral and political science is an influential source of legitimacy which, combined with other elements, such as the media, can have a long-term impact on state behaviour. Typically, many authors shifted from restrictionist to counter-restrictionist positions during the 1980s and the 1990s, before states themselves had established the new practice of intervention. Perhaps the most striking example is the pressure that philosophers, historians and intellectuals exerted on governments in France, Germany and the United Kingdom between 1992 and 1995 concerning intervention in Bosnia.

Many scholars put forward strong demands for a reformulation of the principle of non-intervention. To quote just two prominent authors, in the midst of the Cold War John Vincent analysed the benefits of humanitarian intervention but concluded that it was, by and large, better to prohibit it because any potential gains were less than the risk of endangering interstate order.<sup>44</sup> In 1986, however, Vincent said that the advancement of human rights had reached a point which exposed the internal regime of any state to the legitimate appraisal of its peers. This could imply a right of humanitarian intervention whenever it was possible to 'agree on the values that inform intervention'.<sup>45</sup> Eventually, Vincent (writing with Peter Wilson in 1993)

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<sup>44</sup> John Vincent, *Non-intervention and international order* (Princeton, NJ: Princeton University Press, 1974), pp. 308-49. See Iver Neumann, 'John Vincent and the English school', in Iver Neumann & Ole Waever (eds.), *The future of international relations. Masters in the making* (London: Routledge, 1997), p. 47.

<sup>45</sup> John Vincent, *Human rights and international relations* (Cambridge: Cambridge University Press, 1986), pp. 104 and 150, quoted by Neumann, op. cit. in previous note, p. 58.

proposed a re-evaluation of both the internal and external legitimacy of states, since ‘the principle of non-intervention no longer sums up the morality of states’.<sup>46</sup> Michael Walzer’s approach was more resolute than Vincent’s. In spite of the abuses that occurred during the Cold War, he recognised that in some cases intervention is necessary to maintain peace and justice. In his book *Just and unjust wars*, published in 1977, Walzer’s point of departure was the legalistic principle (or paradigm) of non-intervention. However, he maintained that ‘our judgements about the justice and injustice of particular wars are not entirely determined by the paradigm’,<sup>47</sup> therefore some exceptions to the principle are justified, such as intervention in support of national liberation movements, to counter other countries’ interventions, to stop massive violations of human rights, and to punish aggression.<sup>48</sup> Walzer singled out ‘humanitarian intervention’, and illustrated the reason why those interventions can be considered legitimate:

‘Humanitarian intervention is justified when it is a response (with reasonable expectations of success) to acts “that shock the moral conscience of mankind”. The old-fashioned language seems to me exactly right. It is not the conscience of political leaders that one refers to in such cases. They have other things to worry about and may well be required to repress their normal feelings of indignation and outrage. The reference is to the moral convictions of ordinary men and women, acquired in the course of their everyday activities.’<sup>49</sup>

Vincent and Walzer were pioneers of a general change of attitude, which was further triggered by greater emphasis on a cosmopolitan conception of human rights. The state was no longer considered the guarantor of individual human rights, because it had been repeatedly demonstrated that governments were often the worst violators. The old presumption that the state was the provider of welfare and the only context in which citizens could realise their ambitions was superseded by a new vision in which the international community could, in certain circumstances, supply some level of assurance

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<sup>46</sup> John Vincent and Peter Wilson, ‘Beyond non-intervention’, in Ian Forbes & Mark Hoffman (eds.), *Political Theory, international relations and the ethics of intervention* (London: Macmillan, 1993), pp. 122-32, at p. 129.

<sup>47</sup> Walzer (1977), p. 61.

<sup>48</sup> Ibid, p. 121. Walzer also suggested that preventive action in veritable self-defence is legitimate, p. 85.

<sup>49</sup> Ibid., p. 107.

above and beyond that provided by the state. Following the end of the Cold War, a number of important works confirmed this approach,<sup>50</sup> which is now even regarded as a possible theoretical basis for Security Council action.<sup>51</sup> More recently, Marc Weller developed this argument, by asserting that governments have no legitimate authority over their populations if there is a 'fundamental dissociation' between the leaders and the people.<sup>52</sup> In these cases, the government no longer has the right to represent its people internationally and, consequently, the international community may act in their defence. 'Fundamental dissociation', in Weller's words, is based on the idea of democratic 'representation which underpins the very definition of the state and of its role in the international system.'<sup>53</sup> This may occur during secessionist strife, in anti-constitutional *coups d'etat*, in cases of collapse of authority and when extermination of the population is occurring with the active or passive involvement of the government.

On the other hand, some authors who systematically criticised interventions during the Cold War have continued to condemn more recent interventions.<sup>54</sup> A number of experts from Western and non-Western countries alike have maintained a sceptical view about the advantages of both collective and state-led interventions. Indeed, they employ some interesting arguments. First, they denounce what they regard as the spurious interests of intervening powers, which, they maintain, do not act for humanitarian purposes but for national, egotistical interests. Their interpretation of collective actions, such as the 1991 operation against Iraq with UN Security Council authorisation, is revealing. For instance, George Klay Kieh believes

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<sup>50</sup> See, for instance, works by Ian Forbes & Mark Hoffman (1993), Mario Bettati (1996), Gene Lyons & Michael Mastanduno (1995), Peter Malanczuk (1993) and Laura Reed & Carl Kaysen (1993) mentioned in the bibliography.

<sup>51</sup> For instance, John Williams suggests that 'the horror of the Balkan war has pushed in the direction of a defence of a cosmopolitan and liberal understanding of human rights . . . . Therefore, the relationship between order and justice appears to have been moved towards the justice end of the spectrum by the Council's efforts to manage the collapse of Yugoslavia, with justice understood in terms of individual human beings.' 'The ethical basis of humanitarian intervention, the Security Council and Yugoslavia', *International Peacekeeping*, vol. 6-2, Summer 1999, pp. 1-23, at p. 19.

<sup>52</sup> See Marc Weller, 'Access to victims: reconceiving the right to "intervene"', in Wybo P. Heere (ed.), *International law and The Hague's 750<sup>th</sup> anniversary* (The Hague: Asser Press, 1999), p. 369.

<sup>53</sup> Ibid.

<sup>54</sup> The trend may be considered to have originated around the time of the Vietnam war. A representative author of this current is Noam Chomsky.



that 'the United States' military intervention in the Persian Gulf was not propelled by the lofty ideas of democracy and the respect for international law outlined by President Bush. Rather, it was prompted by the exigencies of imperialism. In other words, the military intervention was designed ostensibly to maintain and expand the United States' politico-security and economic stranglehold on the Middle East.'<sup>55</sup> According to this view, interventions undertaken without Security Council authorisation are more clearly grounded on Western vested interests, as was the case in Kosovo.<sup>56</sup> However, the reluctance to draw a line between legitimate and illegitimate interventions puts those authors in a difficult position. On every occasion, they feel compelled to seek and define Western 'egotistical' interests even where there are none. Such an argument may be convincing for some as regards the collective intervention against Iraq in 1991. However, can anybody believe that the West had obvious vested interests in northern Iraq, Kosovo, or Sierra Leone? Those critics disregard the fact that some common grounds for international action were indeed negotiated and agreed during the 1990s. Second, critics also raise the issue of double standards. Humanitarian interventions tackle some crises because they are convenient for powerful Western states, but they choose not to act in other crises in which intervention would seem equally appropriate. Commenting on the right of intervention from an Egyptian point of view, Emad Gad has written recently that 'countries such as Libya, Sudan, Afghanistan, Iran, Iraq, North Korea, Cuba, Yugoslavia and other countries that oppose the American agenda, will have their sovereignty adjusted in a way that will allow others to interfere in their internal affairs. Whereas the countries that adapt themselves to Washington's policies and concepts will have their sovereignty fortified by American support no matter what crimes they commit. Israel is at the head of these countries.'<sup>57</sup> However, when one condemns double standards, this can imply either that military interventions are needed everywhere, and thus that they are legitimate, or that they should never

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<sup>55</sup> George Klay Kieh, 'Western Imperialism in the Middle East: The case of the US' military intervention in the Persian Gulf', in *Arab Studies Quarterly*, vol. 14-1, Winter 1992, pp. 1-16, at p. 1.

<sup>56</sup> Noam Chomsky, *The new military humanism: lessons from Kosovo* (Monroe: Common Courage Press, 1999); Michael Mccgwire, 'Why did we bomb Belgrade?', *International Affairs*, vol. 76-1, January 2000, pp. 1-23.

<sup>57</sup> Emad Gad, *The right of intervention between the humanitarian and political*, Al-Ahram Center for Political and Strategic Studies, Cairo, 2000 (Kurasat Istrati-jiya/Strategic Papers, 93), p. 31.

happen. Most critics align themselves nearer to the first option, which means that they accept the legitimacy of military intervention.

Academic divergence regarding the acceptability of military interventions is very pronounced indeed. Expressly or tacitly, critics put the emphasis on the protection of state sovereignty, as was the case in the Cold War, rather than on the protection of human rights. In contrast, the mainstream trend stresses the need to respect human rights even if this means a review of the idea of state sovereignty. Thus, during the 1990s the division of scholarly opinion against or (increasingly) in favour of military intervention permeated the wider public debate, and pushed it in the direction of specific military action, notably in the crises of ex-Yugoslavia. Scholars represented the avant-garde, in the sense that they spurred public opinion and governments towards military intervention in specific cases, and provided a theoretical framework for such international behaviour.

### ***Public opinion, the media and NGOs***

A second building block of legitimacy is represented by public opinion, the media and NGOs that have also reinforced the acceptability of some interventions. In general terms, bitter experiences of the Cold War (Vietnam), colonialism (France in Algeria), the passive attitudes of Germany and Japan, as well as scepticism in some other Western countries, made military intervention quite unpopular during the 1980s. The Gulf war, and ensuing international actions to restore peace in civil wars, including Angola, Cambodia and El Salvador, changed public opinion, through a reciprocal process in which intervention was spurred by public opinion, the media and NGOs (first and foremost in the bigger states) and, at the same time, new collective and state-led interventions convinced public opinion that those military operations were right (mainly in more reluctant countries). In particular, the proximity of atrocities in former Yugoslavia provoked a neo-interventionist attitude in Western public opinion. Incidentally, a contradiction that also emerged in Western public opinion in the 1990s must be mentioned. On the one hand, civil society demanded more assertive action, including military operations, in foreign conflicts and crises, mainly on moral grounds. On the other hand, there was a general reluctance to fight wars that might result in significant casualties. Western public opinion was particularly shocked by some deaths amongst Western armed forces during

military actions in Iraq, Bosnia, and Somalia. This means that Western leaders must deal with a paradoxical situation when deciding whether or not to embark on an intervention.<sup>58</sup>

Despite this contradiction, it is now agreed that Western public opinion<sup>59</sup> consistently supported military intervention to maintain or restore peace during the 1990s, with the humanitarian factor being decisive. The American public hesitated about direct involvement in Bosnia, but was more robust over Kosovo.<sup>60</sup> From March 1999, the American public steadily supported (between 60 and 70 per cent) the aerial campaign, and the sending of troops to KFOR.<sup>61</sup> Natalie La Balme has studied French public opinion and has shown that, as early as August 1992, the French public favoured military intervention in Bosnia, and remained equally favourable to military interventions for humanitarian purposes throughout the 1990s. With regard to Operation *Allied Force*, while the French public was hesitant at the beginning, its approval increased from 40 per cent at the end of March 1999 to 70 at the end of April, when 60 per cent also supported ground intervention.<sup>62</sup> British public opinion has been consistently one of the most interventionist in Europe. Philip Towle investigated the pressure from which the government suffered from public opinion 'in favour not just of humanitarian aid to Bosnia, which the government and armed forces provided, but of

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<sup>58</sup> Recent studies, however, have tended to show that public opinion in Europe and America is more inclined to take casualties than the general assumption may indicate. See for instance, Steven Kull, *Americans on NATO operation in Bosnia*, Center for International and Security Studies, College Park, Maryland, May 1998; and Natalie La Balme, *L'influence de l'opinion publique sur les décisions de politique extérieure en France*, Thèse de doctorat, Université Paris I, novembre 1999. Governments are not testing those opinion polls for the time being, and are not ready to take the political responsibility for deaths in peace operations that are not associated with territorial defence.

<sup>59</sup> There are no available data concerning many other countries.

<sup>60</sup> Steven Kull, *Americans on UN peacekeeping*, April 1995; and *An emerging consensus: A study of American public attitudes on America's role in the world*, July 1996, two studies published by Center for International and Security Studies, College Park Maryland. See also Steven Kull, 'What the public knows that Washington doesn't', *Foreign Policy*, Winter 1995; and John E. Reilly, *American public opinion and US foreign policy, 1999*, Chicago Council on Foreign Relations, 1999.

<sup>61</sup> *The Economist*, 25 March 1999; *The Washington Post*, 16 May 1999.

<sup>62</sup> Natalie La Balme, op. cit. in note 58.

military intervention to impose peace on the combatants.’<sup>63</sup> The split between public opinion, on the one side, and the government and armed forces, who underscored the practical difficulties of such intervention, on the other side, was so considerable that Towle concluded: ‘British governments are going to have to work very hard to convince the public of the limitations on the ability of outsiders to reduce the damage in wars like that of Bosnia. The public has to be persuaded that the decision to employ armed forces should be determined not only by the justice of the cause but also by their likely efficacy.’<sup>64</sup> Since reunification, and despite a persistent rift between public opinion in Eastern and Western *Länder*, German public attitudes towards the use of force have changed profoundly, mirroring increased German involvement abroad. As Harald Müller has noted, strong German views on Slovenian, Croatian and Bosnian independence would have prompted a more assertive response, if a constitutional restriction had not existed. As a result, German public opinion and media demanded the use of force by other international actors.<sup>65</sup> During the Kosovo operation, a clear majority of the German electorate supported the military action, even if German soldiers might be killed, and thought that the use of force was justified in such circumstances, mainly on humanitarian grounds.<sup>66</sup> Many opinion polls and studies have confirmed that, with slight variations, public opinion in all Western countries,<sup>67</sup> is in favour of military intervention to avert humanitarian catastrophes, and in particular supported the interventions in Bosnia and Kosovo.

Broadly speaking, public opinion is today more in favour of intervention than it was ten years ago, which undoubtedly increases the perceived legitimacy of some interventions. As a potential barometer for the legitimacy of a specific intervention, however, public opinion has quite limited value. First, the public has a very short memory. Public reactions to international crises tend to be immediate and emotive responses to current crises,

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<sup>63</sup> Philip Towle, ‘The British debate about intervention in European conflicts’, in Lawrence Freedman, ed., *Military intervention in European conflicts* (Oxford: Blackwell, 1994), pp. 94-105, at p. 99.

<sup>64</sup> *Ibid.*, p. 104.

<sup>65</sup> Harald Müller, ‘Military intervention for European security: the German debate’, in Lawrence Freedman, ed., *op. cit.* in note 63, pp. 125-41.

<sup>66</sup> Hans W. Maull, ‘Germany and the use of force: still a “civilian power”?’’, *Survival*, Summer 2000, p. 64.

<sup>67</sup> For Spanish public opinion, see Salustiano del Campo, *La opinión pública española y la política exterior* (Madrid: INCIPE, 1998).

whilst more distant issues are ignored. For example, public opinion of India's intervention in East Pakistan in 1971 is non-existent, because almost nobody remembers. Second, public opinion can be manipulated, especially if the military intervention directly affects the image of the government. Distorted facts are not a good basis for public judgement, and this may invalidate this index of legitimacy in some cases. For example, Western public opinion, which at the time might have effectively denied it legitimacy, was mainly against Vietnam's intervention in Cambodia. However, scholars have now re-elaborated that case and concluded that it was indeed legitimate. Third, public judgements about international issues may be too simplistic and not take into account complex factors that governments have to consider. Therefore, public opinion, whilst an important indicator of legitimacy of a given intervention, is by no means definitive and must be considered along with other indicators.

Public opinion is intimately linked to the media, which also contributes to the new perception of the legitimacy of military interventions. It is widely recognised that the media, and more specifically television, have stimulated what is a veritable thrust for humanitarian intervention. Whilst the influence of television on makers of foreign policy cannot be denied, a debate exists as to the real significance of the so-called 'CNN effect'. To that end, three aspects must be underlined. Firstly, humanitarian catastrophes shown on television screens instigate public opinion (and therefore governments) to favour assertive action, including military intervention. This was particularly the case in Northern Iraq in 1991, Somalia in 1992 and Bosnia in 1995.<sup>68</sup> Secondly, in some cases, the media were driven by government decisions; thus, they provoked public opinion only after being themselves stimulated by governments. For example, the prevailing interpretation of the Somalia intervention is not as simplistic as hitherto. As Steven Livingston and Todd Eachus have shown, American involvement in Somalia in summer 1992 was provoked by 'bureaucratic and domestic political (presidential campaign) considerations . . . With the introduction of American military personnel in August, media coverage of Somalia skyrocketed, not because

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<sup>68</sup> In a review article, Piers Robinson has said: 'If the Gulf War reminded observers of the enormous power that governments had when it came to shaping the media analysis, events after the 1991 conflict appeared to confirm the opposite', 'The CNN effect: can the news media drive foreign policy?', *Review of International Studies*, 1999, pp. 301-9, at p. 302.

conditions had worsened, but because Americans were there.’<sup>69</sup> The ensuing full-scale American intervention of December 1992, and the subsequent engagement of the Clinton administration, were, therefore, caused not only by the broadcasting of images of famine and disorder in Somalia, but also by President Bush’s decision to intervene during the electoral campaign. Thirdly, the media can exert more pressure on governments when there is no clear policy on a specific issue. On the contrary, they can ‘manufacture consent’ for government policies when these policies are more determined. This phenomenon was observed in the months prior to Operation *Allied Force*, when Western media emphasised Serb atrocities in Kosovo.

Overall, it is clear that the media helped to widen the perception of the legitimacy of military interventions during the 1990s. Nevertheless, some commentators have castigated the ‘CNN effect’ because they believe it to be dangerous that media, with incomplete knowledge and sometimes inappropriate intent, dictate foreign policy. Similarly, at the UN, several countries have complained about how the media contribute to selectivity over humanitarian crises. In contrast, others have praised the phenomenon because it implies that global civil society participates in what are otherwise secretive decisions over foreign policy.<sup>70</sup>

Connected to public opinion and the media, NGOs have played a very significant role regarding public perceptions over the need to intervene militarily. Both advocacy groups (such as Amnesty International and Human Rights Watch) and service organisations (such as the Red Cross, Médecins Sans Frontières, CARE and Oxfam) have actively raised awareness of humanitarian crises, and have consistently demanded public interest and government involvement alike. Working on the ground, in coordination with international organisations and states, NGOs have direct access to the area of conflict and are valid interlocutors for the parties, as well as for both

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<sup>69</sup> Steven Livingston, *Clarifying the CNN effect: An examination of media effects according to type of military intervention*, Research Paper R-18, John F. Kennedy School of Government, Harvard University, June 1997, p. 14. See also S. Livingston & T. Eachus, ‘Humanitarian crises and US foreign policy: Somalia and the CNN effect reconsidered’, *Political Communication*, vol. 12, 1995, pp. 413-29.

<sup>70</sup> On this debate, see Piers Robinson, *op. cit.* in note 68, pp. 302-3.

governments and the general public.<sup>71</sup> Therefore, their opinions regarding whether, when and how to intervene militarily are generally considered to be authoritative. This does not, however, imply that they always favour military intervention, since they stress the need for humanitarian assistance above all. One remarkable example of the positive influence of NGOs and scholars over governmental and international action was the promotion of humanitarian assistance by Médecins Sans Frontières, Bernard Kouchner and Mario Bettati, which resulted in French support for General Assembly resolutions at the end of the 1980s. Another example was the position taken by Amnesty International over the intervention in Kosovo (being favourable during the campaign but critical about some aspects of the bombing thereafter), which was widely publicised by the media. Yet another example is the nuanced doctrine elaborated by the Roman Catholic Church vis-à-vis humanitarian intervention. The crisis in former Yugoslavia led the Church to elaborate on the 'just war' theory and to manifest a position in favour of intervention, albeit under certain conditions.<sup>72</sup> In sum, public opinion, the media and NGOs helped to legitimise military interventions during the 1990s, and their views about the correctness of particular interventions will also be relevant in the future.

### ***Internal debates within states***

Political parties may hold different points of view concerning potential interventions, and the exchanges between them, notably in the parliaments of democratic states, are a good opportunity to state various arguments and thus consider the perceived legitimacy of interventions. The general lesson from this important indicator is that political consensus concerning the legitimacy of both collective and state-led interventions grew during the 1990s. Political parties and forces that have cast doubts upon military interventions have been marginalised. Indeed, in parliaments in Europe, the debate about military interventions has not been very intense because the major parties have by and large favoured them. A brief examination of the

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<sup>71</sup> See works on transnational civil society actors, in Muthiah Alagappa & Takashi Inoguchi (eds.), *International security management and the UN* (Tokyo: United Nations University, 1999).

<sup>72</sup> See for instance the document United States Catholic Conference, *The Harvest of Justice is Sown in Peace*, November 1993, at [www.nccbuscc.org](http://www.nccbuscc.org).

evolution in some Western countries (two pivotal actors, Germany and Japan, and the former neutral states) seems pertinent in this regard.

In Germany, the Gulf war and the conflict in Bosnia sparked a lively debate about the use of force that was resolved by a decision of the German Constitutional Court on 12 July 1994. Reflecting a median position, the ruling of the Court considered that the use of the *Bundeswehr* abroad was in conformity with the Constitution provided three conditions were met: (a) the objectives of the military action must reinforce international peace and security; (b) the action must be undertaken within a collective or institutional structure (the Court mentioned the UN, NATO and WEU); and (c) its use was subject to approval by the *Bundestag*. This decision generated a national consensus that allowed German participation in several actions, including Kosovo. However, as Hanns Maull has indicated, participation in the Kosovo operation, although within the limits established by the Constitutional Court, led Germany to cross two critical thresholds: first, the involvement of German forces in combat missions, and second, German involvement in a military operation without an explicit mandate from the Security Council.<sup>73</sup> Those steps were possible without bitter internal debate because a 'red-green' coalition was in power. Although more hesitant, the political evolution under way in Japan is similarly indicative. The Japanese constitution has unequivocal constraints on the use of Japanese Defence Forces. However, the Gulf war and the necessity for stronger involvement in peacekeeping missions that were then being undertaken, especially in Cambodia, motivated the adoption of a law in 1992 that enabled participation in peacekeeping, on the basis of host-nation consensus, impartiality, and the use of arms only in personal self-defence. The problems experienced during the application of this restrictionist approach to peacekeeping, as well as the increasing role of Japan in the UN system,<sup>74</sup> stimulated a political debate from 1998 onwards in which reform of the 1992 law was considered in order to change the rule of personal self-defence and allow the command structure to 'order' the use of arms, if necessary.<sup>75</sup> Eventually, a review of

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<sup>73</sup> Hanns W. Maull, 'Germany and the use of force: still a "civilian power"?', *Survival*, Summer 2000, pp. 56-80, at p. 59.

<sup>74</sup> Japan is the leading financial contributor state to the UN. See Anthony McDermott, 'Japan's financial contribution to the UN system: in pursuit of acceptance and standing', *International Peacekeeping*, Summer 1999, pp. 64-88.

<sup>75</sup> Masahiko Asada, 'Japanese experience in peacekeeping', paper given at an ISS-Japan Institute of International Affairs Seminar, Paris, 24 March 1998.



the Constitution was launched in January 2000 to reform Article 9 and the key clause renouncing the use of armed force.<sup>76</sup> Member states of the EU that do not belong to either NATO or WEU (Austria, Finland, Ireland and Sweden) also experienced an interesting evolution during the 1990s. Broadly speaking, their active participation in the development of the EU's CFSP and, from December 1998, the CESDP, as well as their unqualified support for NATO's intervention in Kosovo, show that reformulation of their neutrality policy is well under way. In any case, it is obvious that those countries also accept military intervention for humanitarian purposes, even though some doubts remain. For instance, Austria, like all other members of the EU, subscribed to the declarations on Kosovo of the Berlin European Council on 25 March 1999, which depicted an apocalyptic situation and declared that the use of force that NATO had already started was justified. Nevertheless, Austria closed its airspace to NATO aircraft, possibly because it considered that the action was not sufficiently based on international law.<sup>77</sup>

The legitimacy of intervention was consecrated by the political systems of Western states in the 1990s, in spite of the fact that parliaments had, at best, only a supporting role. In the last few years, many important developments on the international scene have been government-led, with the result that parliamentary control of government action has been 'relaxed'. However, this does not mean that governments acted without democratic support. On the contrary, this general phenomenon is clearly the product of wide national consensus on essential international issues. Moreover, the complexities and urgency of the challenges, particularly in the field of security, have imposed this pragmatic approach.<sup>78</sup> The same dynamic has influenced

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<sup>76</sup> Although the main parties (and the government elected in summer 2000) support the reform, a two-thirds majority in both houses of the Parliament and a subsequent referendum are needed to modify the constitution. See *Keesing's Record of World Events*, January 2000, p. 43366.

<sup>77</sup> See Gustav Gustenau, 'Towards a common European policy on security and defence: an Austrian view of challenges to the "post-neutrals"', *Occasional Paper 14* (Paris: Institute for Security Studies of WEU, October 1999); and Daniel Keohane, 'Realigning neutrality? Irish defence policy and the EU', *Occasional Paper 24* (Paris: Institute for Security Studies of WEU, March 2001).

<sup>78</sup> For instance, the transformation of NATO and of the Western European Union, and the development of a Common European Defence Policy since the Cologne European Council of June 1999, have been made through intergovernmental declarations, without waiting for lengthy parliamentary ratifications, and this has not been challenged by

decisions about whether and how to intervene militarily. Some constitutions regulate precisely who should decide the use of force, attributing the primacy either to the president (France, United States) or to parliament (Germany). However, in other cases, the constitution is not so clear, and yet the trend has been to favour governmental initiatives.<sup>79</sup> For instance, the Spanish constitution of 1978 requires prior parliamentary approval to engage the country in a (traditional) war, but it does not elaborate upon what should be done concerning participation in coercive measures decided by the Security Council, or in humanitarian intervention. In spite of this, all major political forces accepted the government's implication in collective or state-led interventions during the 1990s, under both centre-left and centre-right majorities.

### *State consensus*

Perhaps the declared points of view of states, which normally take into account the academic debate, public opinion, media and the internal political debate, make up the most important building block for the legitimacy of military interventions. Generally speaking, despite wide agreement about collective interventions authorised by the Security Council, states have been very cautious about the possibility of intervening without a Security Council mandate. This being the case, there were few public declarations on this issue before the Kosovo crisis. It was the possibility of an intervention in Kosovo that compelled Western governments to elaborate public positions from the end of 1998 onwards. The few months prior to the intervention witnessed a stimulating debate within and amongst states, which, as a result, produced a reaffirmation of the decision to intervene, particularly in France, Germany and Italy.<sup>80</sup> The subsequent military campaign was approved from all points of view (legally, morally, and politically) by all 19 members of

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parliaments. As for WEU, see Martin Ortega, 'Some question on legal aspects', in Guido Lenzi (ed.), *WEU at fifty* (Paris: Institute for Security Studies of WEU, 1998), pp. 2-4.

<sup>79</sup> There are not many comparative studies on this issue. See, however, Vincenzo Falanga, *L'autorisation de l'engagement des forces armées hors du territoire national*, Mémoire pour l'École des Hautes Etudes Internationales, Paris, 15 juillet 1999.

<sup>80</sup> Catherine Guicherd has explained how the positions of those governments evolved. See her 'International law and the war in Kosovo', *Survival*, vol. 41-2, Summer 1999, at pp. 26-9.

NATO, as well as the 15 members of the European Union (4 of which are not NATO members), and all 42 states that participated in the April 1999 Washington summit. On 26 March 1999, two days after the air campaign against Yugoslavia had started, a draft resolution requesting an immediate cessation of the use of force was submitted to the Security Council by the Russian Federation, Belarus and India (the latter two not being members of the Council at that time). The Council rejected the draft by a vote of three in favour (China, Namibia, and the Russian Federation), to twelve against. In contrast, SC Resolution 1244 (10 June 1999), which sanctioned completion of the military operation and the withdrawal of Yugoslav forces from Kosovo, was adopted by 14 votes in favour, with only one abstention (China). The General Assembly annual session that started in September 1999, however, tested the states' points of view vis-à-vis the intervention. Many states belonging to the Non-Aligned Movement (NAM) criticised military intervention without a mandate from the Security Council, either in general terms or, rarely, with implicit reference to Kosovo. Several arguments were presented, the most relevant being: that military interventions are made to defend powerful state interests, even if they are labelled 'humanitarian'; that they are selective; that they do not respect the principle of non-interference in states; and that they do not respect the primacy of the Security Council. However, other states declared that it was unacceptable to use the alibi of state sovereignty to excuse grave violations of human rights. This clash has led to the perception that there are two contending groups of states: Northern (or Western) states that support military intervention, and Southern states that regard military intervention as an affront to their sovereignty. Such a profound divide would certainly impede the creation of a global majority position regarding the legitimacy of military interventions.

Indeed, the divide amongst states does not allow the elaboration of a General Assembly resolution or a political declaration with global value, that reflects the recent changes in the principle of non-intervention. However, the divide is not as acute as some commentators seem to believe. The position that criticises military interventions is rather superficial and should not be overestimated. To start with, Chinese and Russian attitudes towards the Kosovo campaign, allied to the apparently radical criticism of the Non-Aligned Movement, which was manifested in a Declaration of the 115 NAM states on 23 September 1999, would suggest that even more assertive action against the intervention in Kosovo or against military intervention in general could have been taken during the General Assembly. However, no

resolution was adopted in that respect. Paragraph 3 of GA Resolution 54/62 (1 December 1999) on 'Maintenance of international security – stability and development in south-eastern Europe', reaffirms general principles, such as the observance of the UN Charter, respect for sovereign equality and territorial integrity, and yet does not refer to the principle of non intervention. It should be re-stated that the General Assembly can take decisions on the maintenance of international peace and security, in spite of the provision contained in Article 12 of the UN Charter. This Article states that the Assembly must abstain if the Security Council is seized on a particular issue. However, the Assembly has repeatedly ignored this provision.<sup>81</sup> The most important precedent is GA Resolution 377 (1950), 'Uniting for Peace', in which the majority of the Assembly, confronted by a veto in the Security Council by the Soviet Union, and at the insistence of Western countries, decided that the Assembly could use its recommendations to deal with matters affecting international peace and security. More recently, some implicit criticisms of Security Council decisions have been made when a majority in the General Assembly have been against a particular course of action. For example, paragraph 18 of GA Resolution 48/88 (20 December 1993) urged states to assist in the defence of Bosnia-Herzegovina, thereby contradicting the arms embargo that had been agreed by the Security Council.<sup>82</sup> Moreover, the General Assembly did not hesitate to adopt a resolution on the situation in the Middle East (20 October 2000) when the Security Council had already decided its position (Resolution 1322, 7 October 2000). In general terms, this practice shows that the General Assembly could recommend measures for the maintenance of international peace and security whenever there is a similar stalemate in the Security Council in the future. However, it also demonstrates that the General Assembly might have adopted a resolution against NATO's action in Kosovo, or against military intervention in general in 1999, if this had been the will of the majority of UN members.

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<sup>81</sup> See Sydney Bailey (ed.), *The procedure of the UN Security Council*, 2<sup>nd</sup> edn. (Oxford: Clarendon, 1988), pp. 263-4; and N. D. White, *Keeping the peace. The UN and the maintenance of international peace and security* (Manchester: Manchester University Press, 1993), p. 132.

<sup>82</sup> This GA resolution was adopted after an attempt by the non-aligned members of the Security Council to pass a resolution along the same lines. See draft resolution submitted to the Security Council, 3247 meeting (29 June 1993), UN Document S/25997, rejected by six votes in favour (including the United States), and nine abstentions.

It may be argued that the lack of assertive action on the part of critic states is due to influence and pressure from Western states. It is herein submitted that the lack of action is rather the product of the profoundly contradictory nature of the criticism, which weakens the position of critic states. Condemnation of the Kosovo intervention or the concept of humanitarian intervention is inconsistent for five distinct reasons. Firstly, a number of states that have criticised intervention have undertaken (both legitimate and illegitimate) interventions from 1945, implying that they believe that intervention is a necessary tool of their foreign policy. Instead of making an effort to distinguish acceptable and unacceptable interventions, especially when the Security Council has set a new international scene, they prefer to condemn intervention indiscriminately, even though they may well intervene in the future and justify their action employing various arguments.

Secondly, states that criticise intervention have very different agendas. As a result, they do not all mean the same things when they subscribe to a declaration. For instance, at the beginning of the 54<sup>th</sup> General Assembly, the NAM adopted a declaration which explicitly condemned all military action against the sovereignty and territorial integrity of its members. Nevertheless, this is understood differently by the members of the Movement. Not surprisingly, the 178 paragraph-long communiqué, which dealt with many conflicts in the world, contained explicit reservations on the part of several states, including India, Iran, Kuwait and Pakistan.<sup>83</sup> The incumbent chairman of the Movement, President Thabo Mbeki of South Africa, addressing the conference that adopted the Declaration on 23 September 1999 said:

‘Can we, or are we ready, as NAM members, to assist each other, learn from one another and act together to end tension and resolve conflicts? Or do we deliberately deny ourselves the possibility of sharing these problems with one another by asserting our state sovereignty? Should we not rather engage in meaningful dialogue and resolve our conflicts? . . . If we are unable to address and resolve our problems, how can we then complain when powerful countries interfere and intervene in our affairs?’<sup>84</sup>

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<sup>83</sup> NAM Declaration of 23 September 1999, text in [www.nam.gov.za](http://www.nam.gov.za).

<sup>84</sup> Speech by President Mbeki to the NAM, New York, 23 September 1999, at [www.gov.za](http://www.gov.za).

On 26 March 1999, Bahrein, Gabon, Gambia and Malaysia, all members of the NAM, and non-permanent members of the Security Council at that time, voted against the draft resolution requesting the suspension of the military operation against Yugoslavia, and then in favour of Resolution 1244 on 10 June. Namibia, also a member of the NAM, voted in favour of the Russian draft, but then approved Resolution 1244.

Thirdly, the two permanent members that occasionally criticise military interventions are not consistent either. Although Russia criticised the extent to which force was being used in Bosnia in September 1995, on the basis of Resolutions 816 and 836 (1993), and strongly condemned NATO's intervention in the Federal Republic of Yugoslavia in 1999, it has accepted the consequences of both actions, and has associated itself with all the collective measures that resulted from those military operations. For its part, China has maintained a more coherent position, since it has systematically abstained in many SC Resolutions that have put in place a panoply of measures under Chapter VII of the UN Charter. However, China has chosen to be a reluctant observer rather than to veto the development of those measures. China's lukewarm attitude is not intended to hamper collective interventions, but rather it seeks to defend its own interests, and to limit state-led interventions. According to one commentator, China's main concern is 'the importance of protecting its own territorial integrity and sovereignty (and that of non-aligned countries, particularly since it was granted Observer status by the NAM in 1992) against Western-dominated international military, political . . . and humanitarian intervention without agreement from the country concerned.'<sup>85</sup> Furthermore, a more positive Chinese attitude has been apparent when collective intervention has taken place in East Asia, with China taking a pro-active role, as was the case in Cambodia and East Timor.<sup>86</sup>

Fourthly, on some occasions criticism of military intervention cannot be differentiated from wider criticism directed towards the Security Council or the international system. In this case, states are not only against intervention by states without authorisation from the Security Council but also against collective actions undertaken by the Security Council. India, for example,

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<sup>85</sup> Sally Morphet, 'China as a permanent member of the Security Council, October 1971-December 1999', *Security Dialogue*, vol. 31-2, June 2000, pp. 151-66, at p. 165.

<sup>86</sup> See Bates Gill & James Reilly, 'Sovereignty, intervention and peacekeeping: the view from Beijing', *Survival*, Autumn 2000, pp. 41-59.

opposes the idea of collective intervention according to Chapter VII of the UN Charter, as it has been developed since 1990, maintaining that:

‘Nowhere in the United Nations Charter was the Security Council authorised to engage in humanitarian action . . . There was no role specified for the Council in humanitarian law or human rights treaty law . . . Indeed, humanitarian intervention would be illegal under the international legal environment of today, as it violated, for example, the Declaration on Friendly Relations, which prohibited intervention in the domestic jurisdiction of a State for any reason. For the Council to decide to instigate such an intervention would undermine international law, leaving other Member States powerless to undo the damage. In addition, the Council was not a representative body, and other States might hold well-founded fears that it could act for less lofty reasons.’<sup>87</sup>

This of course raises the question: what is the real value of criticism of state-led interventions that, *at the same time*, condemns collective interventions?

Fifthly, criticism *of* intervention is also occasionally accompanied by urgent requests *for* intervention. Iran provides an extreme example of what is a contradictory attitude, because while it favoured military intervention in Bosnia and Kosovo, it simultaneously rejected the concept of military intervention. The day Resolution 1244 was adopted, the Iranian representative said to the Security Council that his country welcomed a resolution that was designed to ensure the safe and unimpeded return of all refugees and internally displaced persons to their homes in Kosovo, and to recognise all legitimate rights of the Kosovar Albanians, including the establishment of substantial autonomy. ‘The whole 11-week enterprise would be judged against the achievement of those objectives’, he added.<sup>88</sup> Some months later, the same representative said to the Council:

‘Enforcement action without the authorization by the Security Council and in contempt of the Charter undermined the international security system. The experience in Kosovo, where the Council failed to agree on a

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<sup>87</sup> Indian representative to the Security Council, UN Press Release SC/6818, 9 March 2000. But see Gilles Boquécat, ‘Une lecture de l’attitude de l’Inde durant la crise du Golfe’, in *Etudes Internationales* (Quebec), vol. 31-1, mars 2000, pp. 15-18.

<sup>88</sup> UN Press Release SC/6686, 4011<sup>th</sup> Meeting, 10 June 1999.

course of action and watched unsanctioned action by a regional organisation, was detrimental to the basic principles of international relations.<sup>89</sup>

The previous analysis suggests that the divide amongst states over the legitimacy of military intervention without a mandate from the Security Council must be relativised. Non-aligned states share a strict interpretation of the general principle of non-intervention, but they maintain different points of view about its exact meaning. It is only logical that non-aligned countries such as India, Indonesia, Iraq, Libya, Nigeria, Panama or Syria, to name just a few, have dissonant visions in this respect. The majority that counts is not the majority of references in speeches that are not later corroborated by votes. What is more important is the overwhelming majority that was composed of states from the North and South, which was observed in the Security Council against the draft resolution on 26 March 1999 and in favour of Resolution 1244. This majority not only included non-aligned states, but also two states that do not belong to the NAM, Argentina and Brazil. Historically, these Latin American countries have consistently defended the principle of non-intervention, and yet as members of the Security Council during 1999 followed the majority voting pattern. The Argentinian representative said to the Security Council, on 26 March 1999, that his country's negative vote was based on the vital need to help put an end to the extremely grave violations of human rights that had been occurring in Kosovo. Therefore, the conclusion must be that, although there is a large group of states that in principle do not accept the legitimacy of military interventions without authorisation from the Security Council, most of international society does consider interventions as legitimate tools when the attendant circumstances make the use of force absolutely necessary.

### ***International organisations***

Reactions by international organisations were indicative of the basic legitimacy of state-led military interventions in the 1990s. Obviously, the Security Council's reaction towards a particular instance of the use of force is the most significant indicator, since once the Security Council has decided, the resolution does not represent the will of the states that voted affirmatively, but rather constitutes an expression of the will of the interna-

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<sup>89</sup> UN Press Release SC/6818, 4109<sup>th</sup> Meeting, 9 March 2000.



tional community as a whole. Pronouncements by other UN bodies or other international organisations are also relevant. Indeed, if the target state is part of a regional organisation or alliance, it will normally enjoy the solidarity of the other member states. Conversely, if those organisations or alliances are divided over intervention against one of its members, this is indicative of mixed perceptions about its correctness. Thus, majorities in votes may be a valuable indication of perceived legitimacy. For example, although they have only a political value, resolutions adopted by the General Assembly (voting 75 to 20), and by the Organization of American States (voting 20 to 1) condemned US intervention in Panama in December 1989.<sup>90</sup> Acting by unanimity or majority, the strength of the condemnation or the support given to a specific intervention may also be measured through the language used in declarations produced. The conclusions of the European Council in Berlin, on 25 March 1999, are particularly pertinent to an understanding of the EU members' view that the Kosovo intervention was legitimate. The European Council declared:

‘On the threshold of the 21st century, Europe cannot tolerate a humanitarian catastrophe in its midst. It cannot be permitted that, in the middle of Europe, the predominant population of Kosovo is collectively deprived of its rights and subjected to grave human rights abuses. We, the countries of the European Union, are under a moral obligation to ensure that indiscriminate behaviour and violence, which became tangible in the massacre at Racak in January 1999, are not repeated. We have a duty to ensure the return to their homes of the hundreds of thousands of refugees and displaced persons. Aggression must not be rewarded. An aggressor must know that he will have to pay a high price. That is the lesson to be learnt from the 20th century. . .

In the final analysis, we are responsible for securing peace and cooperation in the region. This is the way to guarantee our fundamental European values, i.e. respect for human rights and the rights of minorities, international law, democratic institutions and the inviolability of borders.’

A reflection of the UN's global significance, the role that successive UN Secretaries-General have played in the process that has led to increased acceptability of intervention must be underscored. Former Secretaries-

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<sup>90</sup> See Karin von Hippel, *Democracy by force: US military intervention in the Post-Cold War world* (Cambridge: Cambridge University Press, 2000), p. 46.

General Javier Perez de Cuellar and Boutros Boutros-Ghali helped to consolidate the perceived legitimacy of collective intervention. Secretary-General Kofi Annan has gone further and opened and animated the debate about the possibility of limited state intervention for humanitarian reasons. Indeed, Annan's voice is felt as authoritative everywhere, and his implicit criticisms of Operation *Desert Fox* in December 1998, and explicit support for Operation *Allied Force*, must be taken seriously. Interestingly, Kofi Annan's speech at the Ditchley Foundation on 26 June 1998, in which he eloquently outlined the argument, represented the starting point of the present debate. After the Kosovo campaign, at the beginning of the 54th General Assembly, he invited UN members to find new responses to the dilemma posed by the tension between state sovereignty and humanitarian intervention. In a reference to the exchange in the General Assembly in 1999, Kofi Annan's excellent Millennium Report, which was presented in March 2000, bravely addressed the issue again:

'I also accept that the principles of sovereignty and non-interference offer vital protection to small and weak states. But to the critics I would pose this question: if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?

We confront a real dilemma. Few would disagree that both the defence of humanity and the defence of sovereignty are principles that must be supported. Alas, that does not tell us which principle should prevail when they are in conflict.

Humanitarian intervention is a sensitive issue, fraught with political difficulty and not susceptible to easy answers. But surely no legal principle – not even sovereignty – can ever shield crimes against humanity. Where such crimes occur and peaceful attempts to halt them have been exhausted, the Security Council has a moral duty to act on behalf of the international community. The fact that we cannot protect people everywhere is no reason for doing nothing when we can. Armed intervention must always remain the option of last resort, but in the face of mass murder it is an option that cannot be relinquished.'<sup>91</sup>

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<sup>91</sup> Millennium Report of the Secretary General, UN Document A/54/2000, chapter 3. The rhetorical fracture amongst states (already observed in the debate in the General Assembly in 1999) was criticised again by Kofi Annan in his report to the General Assembly of September 2000. UN Document A/55/1, para. 37.

In conclusion, this account of the various elements (or building blocks) that contribute to the legitimacy of military interventions suggests that, when all building blocks coincide, broadly speaking, a positive assessment can be made of some interventions carried out by states, even without previous authorisation from the Security Council. A general sentiment, developed during the 1990s, that collective action by the Security Council was necessary and legitimate, has recently been supplemented with the acceptance of state-led humanitarian intervention. Kosovo has acted as the catalyst for the consolidation of relevant previous practice. Criticism of state-led humanitarian intervention (and occasionally of collective intervention) from governments (and public opinion and the media) of Russia, China, and non-aligned countries is not consistent, for those countries have supported intervention on various occasions. In addition, Russia and many non-aligned countries have accepted the outcome of recent humanitarian interventions. Therefore, the positive humanitarian consequences of some interventions, and their contribution to peace and stability, justify the use of armed force, and its inherent risks, in the eyes of the majority of the international community.



# *Chapter Four*

## **THE POLITICAL DIMENSION**

On certain occasions, governments are compelled to decide whether, when and how to intervene forcefully in other states. This is a political decision that takes into account a range of pragmatic considerations, such as the electorate's possible reaction, the potential benefits for the intervener, the feasibility of the operation, and other states' attitudes. A study of the political elements that have a bearing on any decision to intervene is therefore needed. Nevertheless, it is not the purpose of this paper to analyse exhaustively the complex decision-making process that takes place in either democratic or non-democratic states (or in the Security Council for that matter) and eventually leads to intervention. Rather, the objective is to integrate the political dimension in our analysis of military interventions. This chapter introduces first how the political evaluation of a potential intervention is made. Traditionally, military interventions were planned and carried out in order to uphold the national interest of powerful states, whereas contemporary interventions pursue wider objectives, which imposes a new approach to the political decision to intervene. Also, contemporary interventions are normally undertaken multilaterally, so the second section of this chapter examines diverse attitudes vis-à-vis multilateral intervention.

### **IV.1 Traditional and contemporary approaches: from national interests to collective interests**

Obviously enough, the very different situations concerning military intervention before and after 1990, examined in Chapter One, imply two different ways of deciding whether to intervene. Political considerations that are present when deciding imperialistic and colonial interventions by and large differ from the political arguments that are weighed before launching collective and humanitarian interventions. Therefore, two approaches to understanding the political dimension of intervention can be identified. First is the classical approach, which only takes into account the relative positions of intervening states. According to this approach, the political decision to intervene will be correct if the intervention actually enhances the state's power and influence. Indeed, for centuries the traditional imperative that

drove states to intervene was the promotion of national interests, and the desire to improve their position on the international scene. Second, the contemporary approach regards intervention as a means to attain other objectives, such as stopping humanitarian catastrophes and restoring international peace and security. This approach is based on recognition that there exist international or collective interests, as was the case during the 1990s. In theoretical terms, the classical approach corresponds to the realist tradition of international relations.<sup>92</sup> If world politics is power politics, then states will logically employ intervention whenever possible to project power and increase their influence. The realist argument, however, has certain difficulties to explain interventions in pursuit of broader objectives. A rationalist argument is thus needed to interpret the contemporary approach to interventions. States can, and on occasions do, find common grounds to intervene, so they act militarily to uphold general values of the international community.

A closer examination of the two political approaches to intervention is called for. The traditional political analysis of intervention is limited only to an examination of the advantages and disadvantages for the potential intervener of intervening. This includes military-technical feasibility of an intervention and the prospects of attaining the defined ends at an affordable cost. Indeed, military-technical arguments have often been the chief consideration. There are two renowned American positions that employed this pragmatic stance. On the one hand, General Douglas MacArthur strongly backed military intervention in Asia. Within the context of the Truman Doctrine, and the containment of communism, MacArthur was sure, in October 1950, that America had sufficient means not only to control the whole Korean peninsula but also to re-open the Chinese civil war. On the other hand, thirty-five years later, Secretary of Defense Caspar Weinberger formulated a new doctrine (reportedly with the assistance of Colin Powell) that grew out of the United States's disastrous experience in Vietnam and the October 1983 attack on US Marines near Beirut that cost 240 lives. Given the new character of warfare (wars of national liberation, the absence of a clear adversary, the role of the press), Weinberger placed certain conditions on the use of American troops abroad. These included the

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<sup>92</sup> The three traditions – realism, rationalism and revolutionism – are described in Martin Wight, *International theory: the three traditions* (Leicester: Leicester University Press, 1991).

need for a clear objective for the mission, the use of overwhelming force, clear and distinct political support and the promotion of the national interest.<sup>93</sup> The doctrine was later reformulated by Colin Powell, who, during the Gulf war, insisted on the overwhelming use of force but also a clear exit strategy. A strict interpretation of these conditions makes it very unlikely that a decision would be taken to launch any military action if there were not an absolute guarantee of victory.<sup>94</sup>

There are also recommendations from the academic world that develop the classical political approach to intervention. Richard N. Haass maintains that 'it is essential to think in advance about the question of military intervention. Such consideration can assist in the planning of forces, help to prepare the public and the Congress, signal allies and adversaries, and shape diplomatic undertakings.'<sup>95</sup> Haass proposes a list of general criteria on which to base any decision on American intervention. They can be summarised thus: interests are only a guide, tolerance for costs reflects the interests at stake, the purpose of the intervention must be clear, the adversary's response must be anticipated, neither victory nor an exit date should be prerequisites, popular and congressional support are desirable but unnecessary, the adversary is not the only audience, affecting internal politics through the use of force is difficult, and media should not determine policy.<sup>96</sup> Moreover, Haass employed his criteria through a study of twelve recent American interventions. He explains, for instance, that intervention in Panama had its roots in 'in the growing estrangement . . . between the US and Panamanian Defense Force (PDF) head Manuel Noriega, in Noriega's involvement in narcotics trafficking, and in Noriega's decision to nullify the results of the May 1989 election.' He describes the intervention from a strictly American point of view: 'The United States employed what can only be described as overwhelming force given the relative weakness of the adversary; from the outset, U.S. forces took the initiative via intense attacks

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<sup>93</sup> Caspar Weinberger, *The Use of Military Power*, speech to the National Press Club, Washington, 28 November 1984.

<sup>94</sup> In 1990, Colin Powell himself did not favour military action against Iraq. See the review article by Eliot A. Cohen of Powell's *My American journey* (New York: Random House, 1995), in *Foreign Affairs*, November/December 1995, p. 107.

<sup>95</sup> Richard N. Haass, *Intervention. The use of American military force in the post-cold war world* (Washington DC: Carnegie Endowment for International Peace, 1994), p. 68.

<sup>96</sup> *Ibid.*, ch. 4.

against a wide range of targets throughout Panama . . . Within days, organized resistance disappeared and the principal mission of rendering the PDF impotent was achieved.<sup>97</sup> Haass concludes that US objectives were achieved, so the operation was mostly effective. In an extensive study, Yaacov Vertzberger, following a similar logic, distinguishes between low to moderate risk interventions (Granada, Panama, Czechoslovakia), and high-risk military interventions (Vietnam, Lebanon). He discusses the difficulties of processing information and communicating it to decision-makers when they have to assess the risks associated with a given intervention. Equally, Vertzberger underscores the psychological aspects of the political decision, when he distinguishes between risk-seeking and risk-averse decision-makers.<sup>98</sup>

The classical political approach to military intervention must be criticised for two reasons. First, it only takes into account the intervener's point of view. Second, it is exclusively based on the idea of national interest. As for the first, the political assessments of intervention commented on thus far are made by governments and authors from states that have the capacity to intervene, and evaluate the advantages and disadvantages from a purely parochial point of view, without taking into consideration the consequences of a military operation for the target state. Indeed, Haass fails to mention the repercussions for Panama of US intervention, and more balanced studies are not so positive about either the appropriateness or the results of the American intervention. For example, Karin Von Hippel, affirms: 'The list of blunders committed by the US government prior to and during the Panama invasion is weighty. Successive administrations had nurtured Noriega while ignoring his illicit activity; US troops were not adequately prepared for nor overly interested in "nation-building"; civilian agencies were not included in the planning process; the rationales for intervening were smoke-screens for a more personal dispute between Bush and Noriega.'<sup>99</sup> On the accomplishment of the first goal formulated by President Bush – to save American lives – Von Hippel is not convinced either: 'More American lives were lost during the invasion than in the run-up to Operation *Just Cause* (twenty-three US troops as against one) . . . In addition, hundreds of Panamanian civilians

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<sup>97</sup> Ibid. The last two quotations are from pp. 30 and 31 respectively.

<sup>98</sup> Yaacov Y. I. Vertzberger, *Risktaking and decisionmaking. Foreign military intervention decisions* (Stanford, CA: Stanford University Press), 1998, p. 397.

<sup>99</sup> Karin Von Hippel, *Democracy by force: US military intervention in the Post-Cold War world* (Cambridge: Cambridge University Press, 2000), p. 51.



were killed during the invasion.’<sup>100</sup> Political evaluations of interventions that only take into consideration the point of view of the powerful are countered by other analyses that focus on the point of view of the powerless. These emerge from governments and authors in countries that have suffered interventions. This is typically the case in Latin America, the Arab world and other parts of the so-called South. Logically, a political analysis of interventions from the standpoint of the intervening powers must surely be as fair as the analysis made from the standpoint of the target states, who also evaluate the advantages and disadvantages of interventions for both their countries and populations. Therefore, the classical approach to the political analysis of intervention has given way to a dialogue of the deaf between the advocates of powerful states and the defenders of weak states.

Another objection to the classical approach to the political dimension of interventions is that it equates political expediency with national interests, which, from an extreme realistic position, would absurdly suggest that it is advisable to undertake a military intervention whenever the position of a particular state is reinforced. This raises two difficult problems for the realist concept of national interest. First, national interests are, by definition, ‘national’, and therefore inherently conflictual with the national interests of other states. If a government decides to intervene because it assumes that its national interests require military action, other governments may believe that specific military action runs counter to their own national interests. This problem was amply illustrated during the Cold War and with the North-South divide. However, a better understanding of the problem occurs when the national interests of allies clash. Britain and France decided to intervene, along with Israel, against Egypt in the Suez Canal in 1956, to uphold their national interests which had been damaged by Nasser’s nationalisation of the Canal of which they were the main shareholders. Yet the intervention was injurious to the national interests of the United States, which exerted extensive political pressure on the interveners to withdraw their expeditionary forces. Furthermore, following French withdrawal from the implementation of the ‘no-fly’ zones in southern Iraq and Operation *Desert Fox* in December 1998, aerial strikes against southern Iraq were carried out by the United Kingdom and the United States alone. This military intervention led

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<sup>100</sup> Ibid., p. 54. However, Von Hippel recognises the efforts for democratisation made by the United States after the intervention. See also Max Hilaire, *International law and the US military intervention in the Western Hemisphere* (The Hague: Kluwer, 1997), ch. 6.

to a misunderstanding between allies in the Security Council, impeded the development of a common European policy towards the Gulf region, and gave Iraq certain political advantages. A second problem with the traditional political approach to intervention is the very definition of 'national interests'. What the 'national' or 'vital' interests of a country are at a given time cannot be taken for granted, because important aspects of those interests are the object of a national consensus, whilst other elements are keenly disputed. In addition, governments have not always correctly interpreted the national interests of their own state, with the result that some interventions have actively damaged national interests. Thus, whilst a state might act to obtain a better position in the international system, the outcome may actually be a serious setback, which makes the calculation of interests a delicate and inexact process. Since 1945, governments have repeatedly miscalculated the price of many interventions. The history of the Cold War period consistently shows that intervention does not necessarily pay, and to name Suez, Vietnam and Afghanistan suffices to confirm this. Moreover, even though governments have claimed to pursue their national interest, other type of considerations, such as economic ambitions, internal political factors, electoral campaigns and ideology, have influenced their judgement and prevailed over a pure concept of national interest.<sup>101</sup>

In the present post-Cold War international community, the traditional approach to the political dimension of interventions must be abandoned. Indeed, to base interventions exclusively on national political considerations represents an obsolete vision of the world. If this were to continue to be the case, interventions would remain an instrument of the major powers, thus consigning citizens of small states to second-class status, denying them the same human and political rights as others. The corollary of this approach would be to find adequate rhetorical arguments to justify one's own interventions, whilst cynically condemning others' interventions.

Therefore, the classical approach to the political dimension of intervention is useful neither for an appropriate understanding of the complexity of intervention nor for the construction of a new theory of intervention in the post-Cold War world. A contemporary approach to the political dimension should contribute to determining whether a military intervention is politi-

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<sup>101</sup> See James Meernik, 'Modeling international crises and the political use of military force by the USA', *Journal of Peace Research*, vol. 37-5, September 2000, pp. 547-62.

cally advisable from a general point of view, rather than that of a potential intervener. In the present international order, military intervention should be a function of the general interest, which means that in political calculations about whether to intervene, 'national interests' should be replaced by 'collective interests', or even by 'global interests'. That said, if defining national interests is cumbersome, a definition of 'collective interests' will present far more acute challenges. However, some basic criteria could be established. In classical 'Westphalian' (i.e. state-centric) society, while unilateral interventions were usually carried out in pursuit of national interests, they sometimes contributed to the maintenance of a healthy balance of power. Stephen Krasner, for example, points out that in the past, interventions 'have been associated with power asymmetries, not with consensus regarding values';<sup>102</sup> however, some interventions contributed to the 'common good', such as international stability or the protection of minorities. Although it was not a typical state-to-state intervention, because it mainly involved action at sea, one widely accepted example was Britain's determination to abolish the slave trade in mid-nineteenth century. As Krasner recalls, 'the slave trade did not in any direct way threaten the political or territorial integrity of Britain, yet British governments committed treasure, arms, and lives to secure its total abolition.'<sup>103</sup> The positive global side-effects of interventions made for self-defence purposes were discussed in the previous chapter when four cases of acceptable intervention that took place in the 1970s were described. Moreover, illegal and illegitimate interventions may also have some positive effects on the global balance of power, and thus on international peace and security, although this assertion is more difficult to support. Rightly or wrongly, it might be argued that Turkey's occupation of northern Cyprus since July 1974 has been instrumental in lowering tension in the Aegean Sea, and that Syrian intervention in Lebanon since 1976 likewise restored some order in that troubled country, thus contributing to the balance of power in the region. Those possible positive effects, however, are so vague and uncertain that they do not adequately contribute to a general definition of collective interests.

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<sup>102</sup> Stephen D. Krasner, 'Sovereignty and intervention', in Gene Lyons & Michael Mastanduno (eds.), *Beyond Westphalia? State sovereignty and international intervention* (Baltimore and London: Johns Hopkins University Press, 1995), p. 248.

<sup>103</sup> *Ibid.*, p. 247. Some coercive actions were made in Brazilian ports. See also Chaim Kaufmann & Robert Pape, 'Explaining costly international moral action: Britain's sixty-year campaign against the Atlantic slave trade', *International Organization*, vol. 53, Autumn 1999, pp. 631-68.

Prior to the Second World War, or even during the Cold War, it was difficult to find significant common grounds for the enunciation of a global interest. However, after 1990, more tangible parameters that help to define such a concept become apparent. Events in the post-Cold War period have constantly suggested that a broad majority of the international community have common interests, which has permitted far-reaching developments and collective actions. In the light of this experience, the most reliable way to define global interests is to link them to the purposes and principles of the UN Charter. All states, from the democracies that won the Second World War, drafted the Charter, and imbued it with democratic values, to states that obtained their independence thereafter and contributed to the development of those principles, agree that the purposes and principles of the United Nations are the broadest formulation of the political underpinnings of the present international community. Nowadays, therefore, after a disappointing record of interventions in the twentieth century, the key test in determining whether a military intervention is politically appropriate is to decide whether it realises the purposes and principles of the UN Charter.

## **IV.2 Attitudes towards multilateral intervention**

Admittedly, the last statement is too vague. In the face of a crisis or a civil war, when do the purposes and principles of the UN Charter impose a military intervention? How can collective interests that call for intervention from a political point of view be identified in specific cases? In actual fact, the search for common grounds for intervention is made through multilateral exchanges, in which different national positions eventually lead to an agreement. 'Global interests' are thus defined on a case-by-case basis as a result of multilateral negotiations. During the 1990s, this multilateral process gave way both to Security Council authorisations to launch collective interventions and to multilateral state-led interventions. A case in point is the debate over intervention in Bosnia that took place particularly between the United States, EU members and Russia from 1993 to 1995.<sup>104</sup> This is not to say that unilateral interventions cannot serve general interests, as was the case with the French intervention in Central Africa and the

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<sup>104</sup> See Stephen Larrabee, 'Implications for transatlantic relations', in Mathias Jopp (ed.), 'The implications of the Yugoslav crisis for Western Europe's foreign relations', *Chaillot Paper 17* (Paris: Institute for Security Studies of WEU, October 1994), pp. 17-34.

British intervention in Sierra Leone. However, the multilateral approach that has been recently followed assures the integration of various national interests and the definition of a broader common interest.

The national and international political debates over intervention witnessed in the 1990s reflect a new phenomenon, and do not resemble classical or Cold War debates on intervention. Normally, unilateral interventions were planned secretly and made use of the element of surprise. The international debate thereafter was limited to either an endorsement or criticism of the intervention. Today, military interventions are usually discussed at length, before they take place, with different points of view being contrasted. Naturally, the same military-technical issues are also considered, but since the political objectives are collective, current debates have implications that are as yet unknown. This 'multilateralisation' of the decision-making process conditions national interests within the framework of more general interests. Hence, open debate about an intervention renders any decision more objective, thereby reducing subjectivity.

The new political decision-making process leading to military intervention has at least four visible consequences:

- The process is more complicated, since it includes political exchanges between states on sensitive issues. In this respect, it is revealing that NATO's intervention over Kosovo was followed by complaints from both sides of the Atlantic about the complexities of the decision-making mechanisms.
- The objectives of an intervention tend not to be as simple as changing a government or altering a specific aspect of the target state's foreign or internal policy. Averting a humanitarian catastrophe and maintaining international peace and security are much more intricate and delicate tasks than those of traditional intervention.
- Global and regional international organisations play a new role. In the post-Cold War world, the nature of a decision to intervene makes intense negotiations in the UN, regional organisations and ad hoc groupings inevitable.
- Legal and moral considerations come to the fore, with respect for international humanitarian law being particularly emphasised. The fact that various states are jointly considering and carrying out military interventions in the public gaze creates a sort of dynamic of self-containment,

together with a loose social obligation that reinforces the value of legal norms.

Because this is a general study of the various aspects of intervention, this paper cannot address the many practical aspects of multilateral intervention (or multilateral military operations), which have been the object of many a study.<sup>105</sup>

What is relevant for the purposes of this paper, however, is the attitude of states vis-à-vis multilateral intervention. The EU member states, as well as the United States under both mandates of President Clinton, have promoted a multilateral approach to military intervention during the last decade. Of course, all European states and the United States have national interests (just like any other state), and uphold them in various ways. However, as far as the use of armed force is concerned, their national interests have not compelled them to intervene unilaterally in other states in that period. Indeed, the main argument for state-led interventions in which those states have participated has been the promotion of *common* interests. During the 1990s, multilateral exchanges certainly existed both when national interests were more directly involved and when they were not. Examples of coincidence of national and global interests are the interventions in Bosnia and Kosovo. Indeed, while collective and state-led interventions in the Balkans were not solely provoked by Western national interests, it is obvious that Western states regarded stability in the region as a most desirable objective. National interests were not so evidently present in the (collective and state-led) interventions in East Timor and Sierra Leone, and yet European states played an important role in them.

A subtle and gradual convergence between the national interests of Western states and global interests was evident during the 1990s. This evolution is particularly interesting with regard to the United States. In 1991, President George Bush promised a 'kinder, gentler' foreign policy in a 'new world order'. Since American foreign policy was reformulated in September 1993 under President Clinton, the US government has followed a policy of international engagement, avoided unilateralism, and has supported democ-

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<sup>105</sup> See for example, *Coalition military operations*, Report of a French-German-UK-US working group (Arlington: US Crest, April 2000); and Report of the Panel on UN Peace Operations, Lakdar Brahimi, Rapporteur, UN documents A/55/305, and S/2000/809.

racy throughout the world. Following the unilateral adventures of the 1980s in Grenada, Nicaragua and Panama, the United States has not undertaken any military intervention on the American continent for over a decade, which is a 'first'. The military operation in Haiti, mandated by the Security Council and carried out with wide international support in 1994, is a model of how things have changed in this respect. At the same time, the United States has led a number of collective interventions, participated with other countries in peace support operations, and refrained from using its power of veto in the Security Council. In spite of its undisputed political and military supremacy, the United States has chosen to act in a collective, multilateral framework and, with the exception of isolated military actions against Iraq, Sudan and Afghanistan, has not intervened unilaterally since the end of the Cold War. This new stance has implied a slow but certain redefinition of the concept of American national interest. In an important speech on foreign policy delivered in San Francisco on 26 February 1999, President Clinton established parallels between interests and principles:

'It's easy, for example, to say that we really have no interests in who lives in this or that valley in Bosnia, or who owns a strip of brushland in the Horn of Africa, or some piece of parched earth by the Jordan River. But the true measure of our interests lies not in how small or distant these places are, or in whether we have trouble pronouncing their names. The question we must ask is, what are the consequences to our security of letting conflicts fester and spread. We cannot, indeed, we should not, do everything or be everywhere. But where our values and our interests are at stake, and where we can make a difference, we must be prepared to do so. And we must remember that the real challenge of foreign policy is to deal with problems before they harm our national interests.'

President Clinton also attacked the myopic position of those who believe that the United States should not participate in peacekeeping:

'It is in our interest to be a peacemaker, not because we think we make all . . . differences go away, but because, in over 200 years of hard effort here at home, and with bitter and good experiences around the world, we have learned that the world works better when differences are resolved by the force of argument rather than the force of arms.'

Presidential Decision Directive Number 25 of 3 May 1994 had already stated that American troops would participate in peacekeeping when there was a serious threat to, or breach of, international peace and security, but that the deployment would above all have to 'advance US interests'.

However, the Clinton administration has now been replaced by that of President Bush, who seems to have different ideas. Indeed, although foreign policy issues were not at the centre of the 2000 presidential campaign, a deep rift clearly existed between the two parties. Certainly, the now celebrated exchange of views that took place in the periodical *Foreign Policy* underlined the extent of the divide between the two *Weltanschauungen*. On the one hand, the Republican side stressed the need to come back to the idea of national interest as the foundation of American foreign policy. Drawing largely on the findings of the independent 'Commission on America's National Interests,' which presented a report during the 1996 campaign, Condoleezza Rice said that a Republican administration would re-focus US foreign policy solely on the national interest and the pursuit of key priorities, the first of which was 'to ensure that America's military can deter war, project power, and fight in defense of its interests if deterrence fails'.<sup>106</sup> This militarised conception of foreign policy included a marked reluctance to use American troops for operations other than war,<sup>107</sup> the need to find a new enemy after the fall of the Soviet Union, and a causal link between the American economy and military action.<sup>108</sup> On the other side, Samuel Berger made a spirited defence of President Clinton's foreign policy. His point of departure was not a return to past doctrines, but rather an eloquent review of history. He said that, in the Cold War, 'even the doctrine of containment was inadequate: it led us well in our dealings with the Soviet empire in

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<sup>106</sup> Condoleezza Rice, 'Promoting the national interest', *Foreign Affairs*, January/February 2000, pp. 45-62, at p. 46. Ms Rice was a member of the aforesaid Commission in 1996.

<sup>107</sup> 'Because the military cannot, by definition, do anything decisive in these "humanitarian" crises, the chances of misreading the situation and ending up in very difficult circumstances are very high . . . The president must remember that the military is a special instrument. It is lethal, and it is meant to be.' *Ibid.*, p. 53.

<sup>108</sup> In Rice's words, 'The global economy demands economic liberalization, greater openness and transparency . . . International economic policies that leverage the advantages of the American economy and expand free trade are the decisive tools in shaping international politics . . . Yet peace is the first and most important condition for continued prosperity and freedom. America's military power must be secure because the United States is the only guarantor of global peace and stability. The current neglect of America's armed forces threatens its ability to maintain peace.' *Ibid.*, p. 50.



Europe, but it led us astray in local struggles elsewhere.’<sup>109</sup> The United States followed a policy of engagement in the 1990s ‘for reasons unique to our global age. First, regions endlessly mired in conflict are increasingly likely to become breeding grounds for extremism and terror . . . Second, as globalization has raised the strategic cost of indifference to local conflict, it has also raised the moral cost . . . Finally, the disproportionate power America enjoys today is more likely to be accepted by other nations if we use it for something more than self-protection.’ Therefore, according to Berger, when the President endeavours to bring peace to conflicts where the United States has no strategic interests, this attitude ‘demolishes perceptions that an all-powerful America is an arrogant America. It earns us influence that raw power alone cannot purchase, while guarding against resentment that could erode our influence.’<sup>110</sup> Equally, a further redefinition of national interests has been requested by a substantial current of American experts. Joseph Nye, for example, has proposed a thorough rethink of the idea of national interest in the information age, in effect, basing American national interest upon certain global principles.

‘In a democracy, the national interest . . . can include values such as human rights and democracy, if the public feels that those values are so important to its identity that it is willing to pay a price to promote them. The American people clearly think that their interests include certain values and their promotion abroad . . . A democratic definition of the national interest does not accept the distinction between a morality-based and an interest-based foreign policy.’<sup>111</sup>

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<sup>109</sup> Samuel R. Berger, ‘A foreign policy for the global age’, *Foreign Affairs*, November/December 2000, pp. 22-39, at p. 34.

<sup>110</sup> The last two quotations are from *Ibid.*, pp. 29-30, and p. 30 respectively.

<sup>111</sup> Joseph Nye, Jr., ‘Redefining the national interest’, *Foreign Affairs*, July/August 1999, pp. 22-35, at pp. 23-4. See also Tom Farer (ed.), *Beyond sovereignty: collectively defending democracy in the Americas* (Baltimore: Johns Hopkins University, 1996). The negative implications of unilateral interventionism have also been analysed by Antonia Chayes & Abram Chayes, *Planning for intervention: International cooperation in conflict management* (The Hague: Kluwer, 1999), who conclude (p. 212): ‘there are likely to be few Grenadas or Panamas in the future . . . Pressures on government from American business, are more in the direction of greater international cooperation, than for untrammelled superpower freedom. Business executives measure the price they must pay, and how it affects their profits . . . On unilateralism, it may seem as if there are two steps backward for every step forward, but the facts of life become even more compelling, that sequence seems to get reversed, and in some areas, even leaps forward are taken.’

The final outcome of this debate about national interest in the United States cannot be foreseen. A superpower will always be tempted to act militarily even against the express will of its allies, and the majority of the international community. In addition, the United States, as the only world superpower, has the main responsibility for maintaining international peace and security at the global level, for which it enjoys the solid support of its allies. However, the split observed during the 2000 presidential campaign shows that the United States is a global power with two different visions of the world.<sup>112</sup> If the quoted articles by Rice and Berger epitomise the positions, a nineteenth century vision sits uncomfortably alongside a twenty-first century outlook. The obsessive insistence on a concept such as the national interest is reminiscent of empire, with a marked disregard for the rest of the world. Peter Trubowitz has recently studied various definitions of American national interest in contemporary history, and has concluded that 'there is no single national interest. Analysts who assume that America has a discernible national interest whose defense should determine its relations with other nations are unable to explain the persistent failure to achieve domestic consensus on international objectives.'<sup>113</sup> The very existence of such a profound divergence in American political circles suggests that the so-called national interest is not so much 'national' as partisan.

The member states of the EU do not suffer from the same contradiction. Each of them supports the idea that national interests must be consistent with more general interests. The search for common interests must be made multilaterally, both at the European level and globally. Following colonialist adventures and more recent episodes, such as the Suez crisis, European states do not favour state-led military intervention when it is not intended to uphold collective interests, namely to avert humanitarian crises and restore international peace and security. In one way or another, all EU members contributed effectively to developing this vision during the 1990s. Thus, Hubert Védrine, the French Foreign Minister, recently said: 'We must continue to defend our vital interests, as always . . . On the other hand, if

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<sup>112</sup> A bipartisan group of experts, chaired by Frank Carlucci, Robert Hunter and Zalmay Khalizad, and sponsored by RAND, produced a report in November 2000 indicating consensual priorities for the new president. Some disagreements, though, persisted amongst members of the group.

<sup>113</sup> Peter Trubowitz, *Defining the national interest: conflict and change in American foreign policy* (Chicago: University of Chicago Press, 1998), quoted by Joseph Nye, in *Foreign Affairs*, July/August 1999, pp. 22-3.

one is to promote ideas and attain new goals . . . one cannot act alone . . . One must be capable of convincing others, of forming groups . . . which implies a type of coexistence that is in contradiction to some of our national reflexes.<sup>114</sup> In the last few years, however, the British government has made a specific contribution, basing humanitarian intervention expressly on both national and collective interests. Prime Minister Tony Blair has suggested that intervention in Kosovo, for example, upheld global values, but that it also took into account national interests. He said: 'The mass expulsion of ethnic Albanians from Kosovo demanded the notice of the rest of the world. But it does make a difference that this is taking place in such a combustible part of Europe.'<sup>115</sup> Equally, when the United Kingdom decided to intervene in Sierra Leone, the British Prime Minister said: 'It is also in our national interest to do what we can to support the UN and to tackle instability in world affairs wherever we can . . . For instability, even thousands of miles away, can lead, for instance, to fewer jobs back home, to more drugs on our streets, more refugees in the world.'<sup>116</sup> Given the existence of other approaches, the continued support for a contemporary, multilateral approach to military intervention on the part of EU member states is paramount. As will be shown in Chapter Six, future military action by the EU military force will be influenced of necessity by the position of EU members concerning military intervention.

The conclusion of this chapter can be summarised as follows. A complete analysis of intervention must take the political element into account. However, classical considerations of the political circumstances of interventions were based almost exclusively on the national interests of powerful states, which, of course, resulted in serious clashes amongst them as well as abuses against weaker states. A redefinition of the political aspects of interventions is required in the post-Cold War world, to accommodate different points of view and to define collective interests that justify intervention. Of course, this global approach to the undertaking of military interventions renders the decision-making process more complicated, but this is unavoidable given the different national positions concerning intervention. The United States followed a multilateral approach to (collec-

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<sup>114</sup> See, for example, Hubert Védrine et Dominique Moï si, *Les cartes de la France à l'heure de la mondialisation* (Paris: Fayard, 2000), pp. 49-50.

<sup>115</sup> Tony Blair, 'Doctrine of the international community', speech given on 22 April 1999.

<sup>116</sup> Britain's role in Sierra Leone: Prime Minister's broadcast, 19 May 2000, at [www.number-10.gov.uk](http://www.number-10.gov.uk).

tive and state-led) military intervention during the 1990s. In fact, with the exception of a few cases of unilateral punitive intervention, the US administration has negotiated collective interventions in the UN, and interventions not authorised by the Security Council with its NATO allies. It remains to be seen whether the new American administration continues to pursue this multilateral policy, which insures that intervention is undertaken in order to uphold the purposes and principles of the UN Charter, or rather adopts a policy based on a unilateral and antiquated interpretation of the national interest. The member states of the EU have also contributed actively to a redefinition of the political aspects of military intervention over the last decade. The European view is that national interests must be taken into account, but that military intervention should not be based solely on national interests but also on collective interests. Indeed, Europe's standpoint has been very influential in the process of creating of a new principle of limited intervention.

## Chapter Five

### THE PRINCIPLE OF LIMITED INTERVENTION

It is clear that the old legalistic principle of non-intervention is changing, and that a movement towards a new principle of limited intervention is gaining momentum. But while it is one thing to verify the existence of a tendency, it is quite another to determine its precise limits and content. This chapter analyses the substance of the nascent principle of limited intervention, tracing developments over the last decade. The task is a challenging one, because the enunciation of the principle must take into account the three dimensions described in previous chapters, where it was shown how the rules of international law on military intervention are evolving, to what extent states and public opinion increasingly deem some interventions legitimate, and why political considerations make some interventions advisable in order to maintain international peace and security.

However, fundamental principles of international relations are not ordinary rules of international law, as was pointed out in Chapter One. The description of a new principle is not therefore the proposal of a new regulation in the field of international law, a technical exercise that would be circumscribed in the first, legal dimension. Some legal scholars have reflected about the new shape that the legal regulation on intervention should take, and have put forward recommendations, as was seen in Chapter Two. Moreover, the purpose of this chapter is not to rethink either the legitimacy or the morality of interventions. In the last few years, and especially as a result of the Kosovo intervention, there have been many academic reviews of the 'just war' theory,<sup>117</sup> but these are not immediately germane to our purposes. Nor, finally, is the aim to define the necessary political conditions for military intervention. Instead, the purpose of this chapter is to describe the substance of the principle of limited intervention and its consequences for the international order, from a European point of view. The first section introduces an account of the new principle of limited intervention, through

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<sup>117</sup> See David Fischer, 'The ethics of intervention', in *Survival*, Spring 1994, pp. 51-9; Tony Pfaff, *Peacekeeping and the just war tradition* (Carlisle, PA: Strategic Studies Institute, September 2000); Hugh Beach & Roy Isbister, *Old wine, new bottle: the just war tradition and humanitarian intervention* (London: International Security Information Service, October 2000); and Bjørn Møller, 'Kosovo and the just war tradition', Copenhagen Peace Research Institute (COPRI), *Working Papers* 28, 2000.

the definition of eight criteria by which the acceptability of an intervention may be judged, grouped in four clusters: (a) Whether and when to intervene?; (b) How should the intervention be realised?; (c) Who may intervene?; and (d) The primacy of the Security Council. The second section lists the situations in which intervention is *not* permitted, whilst the third presents a number of issues related to the application of the new principle.

## V.1 Acceptability criteria

### *Whether and when to intervene?*

Recent practice has introduced a capital distinction between collective interventions and state-led interventions, and this difference must be the point of departure of the principle of limited intervention. On the one hand, the UN Security Council may decide to intervene in a given state, irrespective of its government's consent, to maintain or restore international peace and security, in application of Chapter VII of the UN Charter. A number of circumstances may be considered by the Security Council to be threats to peace and security (civil strife, humanitarian crises, attack to protected zones, the political situation, etc.) that justify a resort to military force. The only limits that the UN Security Council must respect are the procedural and substantive conditions set forth in the Charter.<sup>118</sup> In allowing the Security Council to act coercively, UN members accept that it acts as a global body in the name of the whole international community. On the other hand, for their part, individual states can also intervene militarily, even without the authorisation of the UN Security Council, but only under certain strictly defined conditions which are discussed below. There is a growing consensus on the need to respect such conditions, and recognition that they are central to the principle.<sup>119</sup>

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<sup>118</sup> See Martin Ortega Carcelen, *Hacia un gobierno mundial* (Salamanca: Hesperides, 1995), chap. 4-6.

<sup>119</sup> Similar conditions or criteria have been spelt out in official speeches (see for example, Robin Cook, 'Guiding humanitarian intervention', 19 July 2000) and in recent publications: *Danish Report*, pp. 106-11; Barend ter Haar (2000), pp. 67-79); and Independent International Commission on Kosovo, *The Kosovo Report* (Oxford: Oxford University Press, 2000), referred to hereinafter as *Kosovo Report*, pp. 185-95. Some of these criteria are reminiscent of the just war theory, but they are different in nature; for example, the just war theory does not include references to the UN Charter or the Security Council. Compare works cited in the present note with those cited in note 117.

*I. States may intervene to avert overwhelming humanitarian catastrophes that put at risk international peace and security.* State-led military intervention in other states may be undertaken when forceful action can prevent or stop a humanitarian catastrophe. The rationale behind general acceptance of this intervention is that the principle of protection of human rights, particularly when they are seriously threatened by violent conflicts, justifies external military action in the absence of an effective response by the government and by the Security Council. The principle of limited intervention, which allows intervention in such situations, is a remarkable evolution with respect to the previous legalistic version of the principle, and yet the new principle does not recognise other kinds of justification. States cannot intervene in a civil war, to uphold self-determination or democracy, or for any other substantive motives, in the absence of an overwhelming humanitarian catastrophe.

With a view to describing the situations that can be qualified as humanitarian catastrophes in a general yet objective way, the *Danish Report* on humanitarian intervention presents a pertinent solution: to adopt the definition of the most serious crimes of concern to the international community as a whole given in the 1998 Statute of the International Criminal Court. Genocide, crimes against humanity and serious violations of international humanitarian law are three well-known concepts in international law that give a fairly precise definition of the humanitarian situations that may justify military intervention.<sup>120</sup>

One interesting aspect of relevant cases of legitimate intervention is that they were undertaken *not only* to avert humanitarian catastrophes *but also* to maintain international peace and security in the regions in question. In fact, legitimate interventions in the 1970s were undertaken to defend territory but they also had the effect of ending humanitarian disasters and bringing about stability. In the 1990s, a conceptual link between humanitarian catastrophes and international peace and security was established by the Security Council. Moreover, state-led legitimate interventions over the last decade have been undertaken in the pursuit of both objectives simultaneously.

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<sup>120</sup> *Danish Report*, pp. 106-7. See Articles 68 of the 1998 Statute of the International Criminal Court.

Although this coincidence is present in many cases of collective intervention and in all instances of limited intervention, it was most explicitly noted in the case of Kosovo. Indeed, a succession of armed conflicts in former Yugoslavia had provoked great instability in the region during the 1990s, and the 1999 intervention sought to put an end to that situation. Before and after the intervention, representatives from NATO member states stressed that, in its Resolution 1199, the Security Council had declared that the deterioration of the situation in Kosovo constituted a threat to peace and security in the region. Similarly, paragraph 16 of the Washington communiqué, adopted at NATO's 50th anniversary summit, affirms: 'The continuing crisis in and around Kosovo threatens to further destabilise areas beyond the FRY. The potential for wider instability underscores the need for a comprehensive approach to the stabilisation of the crisis region in South-Eastern Europe. We recognise and endorse the crucial importance of making South-Eastern Europe a region free from violence and instability.' In other words, through their intervention, NATO countries acted to avert a humanitarian catastrophe *and* to restore peace and stability in the region. Both reasons were always cited simultaneously; NATO never claimed to act to maintain peace and stability exclusively, and this illustrates an important aspect of the new principle.

NATO's intervention confirmed the Alliance's new role as guarantor of peace and stability in the region. This role has to be differentiated from that which other interventions played in the past. In Chapter Four, the political function of some interventions as instruments for keeping the balance of power was mentioned, yet this political meaning had to be found outside the framework of the UN Charter. Those interventions were normally not only illegal but also illegitimate, even if the international system tolerated them temporarily because they enhanced stability in strategic terms. In contrast, NATO's regional role has been widely perceived as legitimate and in accordance with the purposes and principles of the UN Charter, and was later implicitly recognised by the Security Council. Therefore, NATO's role is a regional contribution to global international peace and security, just as self-defence is an individual contribution to the same end. Being an inherent right of the state, self-defence is enshrined in Article 51 of the UN Charter. However, the new role of regional organisations with regard to international peace and security, particularly the relationship between the UN and NATO, will have to be worked out on the basis of relevant practice.



This development is so novel that it is for the present hard to draw definitive lessons. Nevertheless, it is clear that NATO's regional role is in conformity with the UN Charter. The Alliance's April 1999 new Strategic Concept presents NATO as a body that is ready to contribute actively to crisis management in the Euro-Atlantic area, along with other organisations. This does not mean that NATO is supplanting the UN Security Council in this area, since NATO underscores that the Security Council has the primary responsibility for the maintenance of international peace and security. Indeed, NATO's Strategic Concept suggests that there is a panoply of organisations that can contribute to the same end, each one with its specific capabilities. It is true that the Strategic Concept refers to risks that may affect members' security and therefore require action, possibly out-of-area action. But those risks are not just a threat to NATO members, they also threaten other states in the area, and international peace and security in broader terms. Paragraph 20 of the Concept states that: 'The security of the Alliance remains subject to a wide variety of military and non-military risks which are multi-directional and often difficult to predict . . . The resulting tensions could lead to crises affecting Euro-Atlantic stability, to human suffering, and to armed conflicts. Such conflicts could affect the security of the Alliance by spilling over into neighbouring countries, including NATO countries, or in other ways, and could also affect the security of other states.' NATO is therefore ready to act for crisis management not only to assure its members' security but also in order to increase other states' security. According to its Strategic Concept, NATO defends the purposes and principles of the UN Charter with means that are not always at the disposal of the Security Council or other regional organisations. This is good news for the region but also for the international community, since there is a regional organisation willing and capable to act according to the UN's purposes and principles. However, the fact that NATO member states are applying the purposes and principles of the UN to a particular regional situation implies, of course, that those principles will be interpreted by NATO members and not by the Security Council. This makes all the more important the obligation of NATO members to interpret and apply those principles correctly. Indeed, the fact that NATO is composed of nineteen democratic nations, each having the right to dissent, is crucial for this matter, as is examined below.

*2. Diplomatic efforts and other peaceful means must have been exhausted.*  
Military intervention is only acceptable when other institutional and

diplomatic efforts are not capable of bringing about a peaceful solution. Consequently, the decision whether or not to intervene militarily must be based on the verified conviction that all peaceful means have been tested and exhausted. However, necessary as it is, this condition is not always easy to evaluate, since, on the one hand, a protracted search for a diplomatic solution might lead to a worse humanitarian situation, whereas, on the other, one might always think that further negotiations could lead eventually to a peaceful solution. The decision as to when exactly a military intervention has to be launched, therefore, should strike a balance between the pressing requirement to end the humanitarian tragedy on the ground and the need to exhaust peaceful means.

3. *In cases of particularly serious humanitarian situations, there is an obligation to intervene.* Under certain conditions, states have a right to intervene; however, is there also an *obligation* to intervene on some occasions? The question imposes itself in the face of the appalling genocides that the world has witnessed in the last century: for instance in Nazi Germany, in Cambodia and more recently in Rwanda. The response on the part of scholars is unanimous: governments have a moral obligation to act if they can avert terrible massacres. Pierre Hassner has pointed out eloquently that the behaviour of certain criminal governments has been so cruel that the rest of the international community cannot be held back from acting for the sake of futile debates about the intervention's correctness: 'Faced with a Hitler or a Pol Pot, can one really afford to spend time debating whether an intervention that would snatch their victims from their clutches would be humanitarian or political if it is above all a matter of saving human lives and dissuading potential ethnic cleansers?'<sup>121</sup> Gordon Graham also addresses the moral imperative to intervene. Recalling the massacre in Rwanda in 1994, Graham observes that similar brutal actions committed in any state would have meant a moral and political obligation on the part of the government to halt the killings. However, Graham asks, does the fact that the carnage is taking place within the borders of *another* country lessen the obligation of governments?<sup>122</sup> The answer is, of course not: 'If and when it is the case that a single state *could* intervene in the affairs of another state no less effec-

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<sup>121</sup> Pierre Hassner, 'Par-delà le national et l'international: la dérision de l'espoir', *La violence et la paix* (Paris: Editions du Seuil, 2000), p. 267.

<sup>122</sup> Gordon Graham, *Ethics and international relations* (Oxford: Blackwell, 1997), p. 112.

tively and to an equally good end as in its own affairs, how could its duty to do so stop at a contingent political boundary?’<sup>123</sup>

During the 1990s, the international community largely shared the view that intervention was absolutely needed in some cases. It is true that states cannot intervene everywhere. As the British Prime Minister has pointed out: ‘Looking around the world there are many regimes that are undemocratic and engaged in barbarous acts. If we wanted to right every wrong that we see in the modern world then we would do little else than intervene in the affairs of other countries. We would not be able to cope.’<sup>124</sup> However, there is a general consensus that, in cases of terrible massacres and genocides, the moral obligation is so strong that it crosses not only state boundaries, but also the boundaries between ethics, law and politics. A widespread sentiment of remorse about the failure of the international community in Rwanda is felt everywhere. As early as the beginning of May 1994, *The Economist* said bluntly: ‘the world did not want to know. Rwanda was too difficult, too remote, maybe too black. Its agony was not played out on television . . . A bloodstain is spreading on the map of Africa – and on the conscience of the world.’<sup>125</sup> In 1999, the UN Secretary-General commissioned two studies to determine what had caused the failures in Rwanda and in Srebrenica. For Kofi Annan, it is clear that such tragedies should never be allowed to happen again. He couples responsibility and obligation: ‘In essence the problem is one of responsibility: in circumstances in which universally accepted human rights are being violated on a massive scale we have a responsibility to act.’<sup>126</sup>

4. *Specific intervention to rescue nationals is allowed under certain conditions.* A sufficient number of precedents (French intervention in Shaba, in May 1978; Israeli intervention in Entebbe, Uganda, in 1976; Belgian and French intervention in Kinshasa, September 1991; British intervention in Sierra Leone, May 2000) show that international society deems it acceptable to rescue nationals in serious danger in other countries, when the governments in those countries have neither the will nor the means to protect them. But other examples also show how easy it is to abuse this idea. It is there-

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<sup>123</sup> Ibid., p. 113.

<sup>124</sup> Tony Blair, ‘Doctrine of the international community’, speech given on 22 April 1999.

<sup>125</sup> *The Economist*, 7 May 1994, European edition, p. 15.

<sup>126</sup> *Report of the UN SG on the work of the Organization*, 2000, UN Document A/55/1, para. 37.

fore very important to establish and respect the right conditions governing this type of humanitarian intervention. These conditions include: the government must have an active or passive responsibility in the situation; the danger to nationals must be verifiable; the intervention must be punctual and should not affect the government; the military operation must be limited to the realisation of the objective of saving lives; and it must finish once the nationals have been rescued.<sup>127</sup>

### ***How should an intervention be realised?***

5. *Military force must be proportionate to the humanitarian objective and must respect international humanitarian law.* Military force is the last resort to manage a crisis with unbearable humanitarian consequences. The coercive measures must accordingly be directed towards the objective of averting the humanitarian catastrophe, and not towards a different end. Acceptable military intervention must be confined strictly to the forceful actions that are necessary to attain the humanitarian purpose. When the aim of reinforcing peace and security is brought into the picture, the concrete objective of the intervention becomes more difficult to define, and therefore also the means. In any case, military intervention must respect the rules of international humanitarian law. However, while the principles of necessity and proportionality are well established rules of the laws of war, their application in specific cases is always problematic. The dilemma has various facets. There is no rule that can determine which specific military actions are necessary to achieve the just end. On the other hand, overwhelming intervention can provoke a rapid end of the conflict. Moreover, forceful actions are naturally intended to produce a lethal effect, and it is not always possible to spare innocents from those effects even if the greatest care is taken. Despite those problems, the general rules do apply, and surely more intensively so, in military operations that are designed to avert humanitarian crises and to restore peace and security.

In the case of Kosovo, reports produced by some ministries of defence have stressed that NATO members were respectful of humanitarian law.<sup>128</sup>

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<sup>127</sup> See Natalino Ronzitti, *Rescuing nationals abroad through military coercion and intervention on grounds of humanity* (Dordrecht: Nijhoff, 1985).

<sup>128</sup> See for example *Les enseignements du Kosovo* (Paris: Ministry of Defence, November 1999), chap IV.

Nevertheless, a number of questions as to the adequacy of the military force used have arisen. Attacks on fixed targets with direct effects to civilians, the difficulties of avoiding collateral damage while bombing from high altitude, the use of contaminating materials such as toxic chemicals and depleted uranium, and the use of cluster bombs, parts of which remain unexploded, have been mentioned by parliaments, NGOs and authors as proofs of the partially unlawful or immoral character of the NATO campaign.<sup>129</sup> The lesson from the Kosovo intervention is that insistence on the part of some governments as well as criticism from civil society lead to a reinforcement of the laws of war.<sup>130</sup>

### ***Who may intervene?***

6. *Any state having the appropriate means may intervene to stop a humanitarian catastrophe.* If a humanitarian catastrophe that puts at risk international peace and security is actually occurring, and the Security Council fails to act (see acceptability criterion 8 below), any state that is in a position to avert it and has the right means is entitled to act. Whether or not the potential intervener is a state that is democratic or industrialised, and whether or not it is acting within a regional organisation, are not immediately relevant factors. Intervention in Kosovo raised the issue of the type of organisation that is entitled to use force to tackle humanitarian disasters. The question is, which military alliances, regional organisations or state groupings *may* carry out similar legitimate interventions? This question has provoked some concern amongst NATO members and other states alike. However, a coherent response is needed. *Any* state or organisation is entitled to intervene, provided the substantive conditions for intervention according to the principle obtain. The precedents mentioned in Chapter Three leave no doubt about this issue.

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<sup>129</sup> See Amnesty International, *Collateral damage or unlawful killings? Violations of the laws of war by NATO during Operation Allied Force*, June 2000; see also *Kosovo Report*, pp. 177-84.

<sup>130</sup> Professor Adam Roberts (1999, p. 116) has pointed out that 'the Kosovo campaign may yet teach NATO member states that they can live with the existence of an international criminal tribunal capable of considering their actions as well as those of their adversaries.'

However, what states or international organisations might be *willing* to intervene? It must be recognised that, in this respect, national interests will always play a role. Military intervention may not be based exclusively on the national interests of the intervener. The principle of limited intervention suggests that acceptable interventions must be undertaken for more general aims, such as averting humanitarian catastrophes. However, national interests are bound to be included amongst the political considerations when decisions to intervene are taken. States will be more keen on intervening to avert humanitarian crises that are taking place near their borders or may affect their region's security. Moreover, interventions undertaken for humanitarian reasons and to reinforce peace and stability are costly, and states will probably be ready to participate in those interventions only when their national interests are at stake. But this is not a problem. Both collective and state-led interventions in the 1990s showed the extent to which it is possible to combine national and global interests. On other occasions, states have undertaken or participated in interventions in which there were no apparent national interests involved. In this respect, although it seems fair to take into account the national interest, the most demanding situations requiring intervention might well be only of marginal concern to the national interests of the countries with the necessary capabilities. Again, large-scale massacres and genocide must be halted without first stopping to consider whether they affect the national interest.

The most important condition that potential interveners should meet is that they must have the appropriate means to avert the humanitarian catastrophe in question and to restore peace and security. This condition is all the more important because the objectives of contemporary interventions are complex and demanding. However, the traditional formulation of this criterion, that is, that any military action must have a 'reasonable expectation of success', has to be reformulated. What is 'success', when one is trying to halt a humanitarian tragedy or help restore international peace and security? What does 'success' mean in the complex circumstances of today's interethnic conflicts, which require a continued foreign presence? Nowadays, the demanding objectives of legitimate military interventions call for the use of sophisticated means. It would be unthinkable to stop a humanitarian tragedy through a full-scale war that would cause even more humanitarian distress. If the potential interveners do not have the right means, non-intervention would be a better option, even if other circumstances allowing intervention

are present.<sup>131</sup> In addition, a well-intended intervention that is not realised with the appropriate means might degenerate into a nightmare scenario for the intervener.

7. *The correctness of a given intervention is in direct proportion to the number of states that undertake it, and to their democratic character.* Whilst any state or international organisation with the right means may launch a legitimate intervention, provided the necessary conditions are met, it is obvious that the number of states that decide, carry out, and support a military intervention is a crucial aspect of the general acceptability of that intervention. It is clear that collective intervention that is authorised by the UN Security Council is backed by all UN members, according to the UN Charter. In non-authorised interventions, a continuum may be defined, ranging from interventions carried out by a substantial number of states, and endorsed by a majority, as in Kosovo, to unilateral interventions that are widely condemned. The legitimacy of a given intervention is thus in direct proportion to the number of states that realise and endorse it. Many governments have declared that, in the absence of authorisation from the Security Council, the broad international support given to intervention over Kosovo was proof of its correctness. This aspect has been stressed by Robin Cook, the British Foreign Minister, who underlines that 'our intervention in Kosovo was a collective decision, backed by the 19 members of NATO and unanimously by the 42 European nations which attended the Washington NATO Summit in April 1999.'<sup>132</sup> This criterion must be included in the principle of limited intervention as a result of the precedents established in the 1990s. This criterion suggests that the fact that a military intervention has the support of a regional organisation, such as the OSCE, will be a potent indicator of its acceptability. *A contrario*, this rule means that unilateral interventions, or military interventions by a few states, which are condemned by many others, do not benefit from a presumption of legitimacy.

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<sup>131</sup> The UN Secretary-General has recently recognised (*Report of the SG on the work of the Organization, 1999*, UN Document A/54/1, para. 114): 'Most regions do not have organizations with the capacity to carry out major peacekeeping or peace enforcement operations. Some regional organizations – most notably OAU – would like to develop a peacekeeping capacity and it is important that the international community assists them'.

<sup>132</sup> Robin Cook, 'Guiding humanitarian intervention', speech given on 19 July 2000.

To identify an international organisation or group of states that is entitled to undertake military intervention, another criterion has been more vaguely used. The fact that NATO members are democratic states has been regarded as a guarantee that they made a correct appraisal of the humanitarian and political situation in and around Kosovo. In the same vein, democratic states, in principle, would always pursue the right ends, use the appropriate means, and respect international humanitarian law during military operations. However, this idea is not established in international law yet. As Adam Roberts has pointed out,

‘Existing international law relating to the legitimacy of resort to force does not depend to any significant degree on the fundamental distinction between democratic and autocratic states. In UN-based as well as European institutions, democracy may be emerging as an important criterion whereby a state’s claims to be a legitimate member of international society are judged, but this has yet to be reflected in the body of international law relating to intervention.’<sup>133</sup>

Representatives of states did not, either during or after the Kosovo campaign, employ the democratic argument thoroughly, perhaps because they were well aware of the fact that democracy is not a guarantee against international wrongdoing. Indeed, the democratic character of Western states has not impeded them from undertaking dubious interventions in the past, for two reasons. The first reason is that democratic states acted as separate entities, so the predominant political attitude in favour of (illegitimate) interventions prevailed, in spite of some internal criticism. The political debate in the United States about intervention in Vietnam, for instance, had some repercussions in public opinion of other democratic countries, but did not raise serious concerns amongst Western governments. The second reason is that the Cold War imposed a quite narrow approach to the debate about international relations. Thus, interventions were not judged on their own merits, but rather the question of whether they contributed to the containment of communism prevailed. In today’s interconnected world, these two factors have gone. First, democracies are tightly attached to each other through a web of technological, economic and human links. Indeed, one state’s international behaviour is no longer an internal affair, and this

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<sup>133</sup> Adam Roberts, ‘NATO’s “humanitarian war” over Kosovo’, *Survival*, vol. 41-3, Autumn 1999, p. 107.



applies particularly to the EU and NATO member states. The important thing about democracy is that open societies allow criticism of (their and other) governments' actions, not only in parliaments, but also in the wider public debate in which the media, academics, NGOs, etc., participate, and this phenomenon takes place on a global scale. Second, the end of the Cold War has made obsolete many excuses that governments gave to avoid abiding by the principles. Nowadays, there are no valid strategic reasons whatsoever to uphold an undemocratic regime that gravely violates human rights. Therefore, the democratic character of intervening states must be included in the new principle of limited intervention. However, this potent indicator of the correctness of state-led interventions does not exclude either unacceptable interventions undertaken by democratic states or acceptable interventions by undemocratic states.

### ***The primary responsibility of the UN Security Council***

8. *State-led intervention is possible only when the Security Council is unable to act but there is support from the international community.* The UN Charter states clearly that member states confer on the Security Council 'primary responsibility' for the maintenance of international peace and security. States can only use armed force, according to the Charter, in self-defence and to carry out enforcement measures decided by the Security Council. However, states have also helped to maintain international peace and security when the Security Council was unable to act, particularly in cases of legitimate military interventions. This is a major development in the international order that calls for explanation. There are two valid justifications of that development. First, there is a justification which is *internal* with regard to the UN Charter. The evolving content of the purposes and principles of the Charter, including the respect for human rights and the maintenance of peace, has given birth to new (unwritten) constitutional norms, such as the new role of the Security Council and the possibility of legitimate state-led interventions under certain conditions. Second, another justification, which is *external* with respect to the UN Charter, is that some uses of force are legitimate because the international community accepts them, and considers them necessary in order to maintain international peace. In other words, legitimacy conferred by the international community (in the sense it was described in Chapter Three below) is a valid

justification for uses of armed force which are not expressly foreseen in the Charter.

Both justifications suggest a solid basis for state-led intervention when the Security Council is unable to react. Relevant precedents of legitimate intervention show that interveners did not wait for Security Council authorisation, and yet their interventions effectively contributed to stop humanitarian disasters and to enhance international peace and security. But as a matter of principle, the Security Council has primary responsibility, so states are only entitled to act when the Security Council is unable to discharge its responsibility. However, *when* is the Security Council actually unable to act? In the case of Kosovo, NATO's action was undertaken without previous authorisation because it was sure that a veto in the Security Council would have impeded an effective resolution. As Robin Cook put it, 'regrettably, the threat of veto by two of the Permanent Members made Security Council action impossible despite the majority support for our cause.'<sup>134</sup> Therefore, NATO's intervention was decided when it was absolutely evident that the Security Council was unable to act. In more general terms, as soon as a veto is exercised, and notably when this happens repeatedly, as was the case during the Cold War, it is obvious that the Security Council is paralysed. Yet before an actual veto has occurred, the 'threat of veto' does not suffice to invalidate the primacy of the Security Council, because that 'threat' may be construed in different ways. Indeed, the paralysis of the Security Council must be coupled with recognition by the international community that the use of force is acceptable. Therefore well grounded legitimacy, in the sense described in Chapter Three, is the only valid substitute for Security Council authorisation.

## **V.2 Situations in which military intervention is not permitted**

A new principle of limited intervention thus includes a description of the strict conditions that are necessary for acceptable intervention, yet it should also reinforce the ban on intervention in any other situation. The argument is the same in both cases. Historical developments over the last decade render some types of intervention acceptable in the eyes of the international community, while at the same time those developments clearly preclude

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<sup>134</sup> Robin Cook, 'Guiding humanitarian intervention', speech, 19 July 2000.

other uses of armed force. During the 1990s, states, international organisations and other international actors, did not support a right to intervene that included any of the classic reasons, which fall broadly into the imperialistic, colonial, ideological or Cold War patterns of intervention. Moreover, the last instances of interventions within those patterns during the 1980s were strongly condemned by the international community as a whole.

Consequently, the new principle of limited intervention also contains the classical rules concerning non-intervention that have not been transformed. Current emphasis on humanitarian intervention tends to overlook the existence of other forms of intervention (mentioned in Chapter One), which are less present in the current debate, but no less significant for international relations. Therefore, the description of the principle of limited intervention must include a list of the situations in which intervention is unacceptable. Indeed, in those cases intervention impinges upon international peace and security as well as other purposes and principles of the UN Charter.

- *Intervention in civil wars.* States are constrained to forbear any military help to the parties in a civil war fought for ideological or other reasons. If the internal political situation degenerates, or in the case of a *coup d'état*, states may back one of the parties with political, non-forcible means, but if civil strife breaks out, states may not support one of the belligerents militarily. Contradictory external evaluations of the situation may give rise to conflicting military interventions, which would worsen the situation.
- *Intervention in support of self-determination.* Now that colonial self-determination is nearly completed, the old assumption made by the UN General Assembly in the 1960s and 1970s that support to the struggle of national liberation movements is acceptable is no longer valid. States have a political, moral and legal obligation to abstain from using military force in a war of self-determination. Indeed, external actors may help to find peaceful solutions to the dispute, but they cannot use armed force. Other alternatives, such as a right to assist militarily parties claiming self-determination, would allow powerful states to redraw frontiers at their convenience. In this sense, (collective and state-led) intervention in South-Eastern Europe in the 1990s cannot be construed as having been supportive of self-determination. As the then US Deputy Secretary of State Strobe Talbott put it, the aim was rather 'to remake the politics

of the region without, this time, having to redraw the map . . . We are trying to define and apply the concept of self-determination in a way that is conducive to integration and not to disintegration.’<sup>135</sup>

- *Intervention for purposes of self-defence.* The assessment of intervention, when it is linked to self-defence, is dependent upon a judgement on the merits of the alleged self-defence. If self-defence is exerted correctly then intervention in self-defence is acceptable (because, in fact, it is not intervention), and collective self-defence in support of the attacked state is equally permitted. The French and Zairean military presence in Chad in the 1980s, for instance, was not military intervention but collective self-defence to help territorial defence against aggression. However, experience shows that genuine self-defence situations are rare. Therefore, contentions that intervention in a neighbouring state is undertaken for purposes of self-defence, and that collective self-defence has been undertaken at the ‘request of military assistance from the legitimate government’ should be considered with circumspection.
- *Intervention following previous military intervention by another state.* This justification must also be taken cautiously, given the abuses that occurred during the Cold War. Mere suspicion of third power’s presence, or of foreign covert illegal activities, was the alibi for superpower military intervention. Indeed, simple accusations of foreign intervention are not a valid excuse to intervene. However, if previous foreign intervention is actually an act of aggression, collective self-defence may apply. Again, the assessment made of a military action – i.e., whether it is intervention or collective self-defence – is dependent on whether the state is acting in legitimate defence of its territory.
- *Democratic intervention.* During the Cold War, and especially in the 1980s, a few cases of intervention were allegedly based on the need to uphold democracy in the target state. However, this justification was never accepted by the international community. Of course, many international measures in support of democracy can be taken, but the use of

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<sup>135</sup> Strobe Talbott, ‘Self-determination in an interdependent world’, *Foreign Policy*, Spring 2000, pp. 152-64, at p. 155.

armed force is not the most efficient means to impose democracy.<sup>136</sup> In the last decade, the idea of 'democratic intervention' has not been employed by states. Security Council Resolution 940 (1994) declared that the political situation in Haiti, including a *coup d'état*, threatened security in the region, and that a multinational force, under US leadership, should intervene. Subsequent efforts, notably by the UN, re-established democracy in Haiti. The lesson is that the Security Council may undertake collective 'democratic intervention' but states cannot. Indeed, the case of Haiti is quite exceptional. In other cases of collective (Iraq) and state-led (Kosovo) interventions, the objectives of the military operations did not include the bringing down of undemocratic regimes. In theoretical terms, the concept of 'democratic intervention' is based on the assumption that democratic regimes are entitled to uphold democracy even with forceful means. But this assumption must be qualified. The record of illegitimate uses of force and interventions by democratic states (during the Cold War and before) shows that internal democracy is not a guarantee against international wrongdoing. Confirming the Kantian principle that democracies do not go to war against each other, many studies have demonstrated that a zone of 'democratic peace', particularly in the North Atlantic region, has been established during the last century.<sup>137</sup> However, as James Lee Ray has pointed out, 'democratic states may be relatively peaceful in their relationships with *each other*; their relationships with autocratic states can, however, clearly be quite conflictual. Furthermore, democratic states in their relationships with autocratic states can often be hypocritical, self-righteous, and aggressive.'<sup>138</sup>

- *Punitive intervention.* Punitive intervention is not permitted because it is based purely on subjective assessments of international events. If some states believe that another state has organised a criminal act beyond its

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<sup>136</sup> See Antonio Remiro Brotons et al., *Derecho Internacional* (Madrid: McGraw-Hill, 1997), chap. XXXVII.

<sup>137</sup> For a recent academic discussion, with bibliography, see Tarak Barkawi & Mark Laffey, 'The imperial peace. Democracy, force and globalisation', *European Journal of International Relations*, December 1999, pp. 403-34.

<sup>138</sup> James Lee Ray, 'Promise or peril? Neorealism, neoliberalism, and the future of international politics', in Charles W. Kegley Jr. (ed.), *Controversies in international relations theory. Realism and the neoliberal challenge* (New York: St Martin's Press, 1995), at p. 344.

territory, do they have the right to retaliate? If the answer is yes, what force should be employed, and against whom? Can *any* state judge international misdeeds of others and therefore attack in retaliation against *any* other? And what if the assessment of the first criminal act and/or the selection of the objectives were wrong? How would the responsibility for an erroneous 'punitive intervention' be evaluated? This type of intervention, thus, raises too many unsolvable questions. In addition, 'punitive intervention' normally has negative effects on the international order (as was shown by Operation *Desert Fox*), because the target state would normally seek to retaliate in its turn, thereby adding to a spiral of violence. In contrast, collective 'punitive intervention' decided by the Security Council is possible, since it is based on a collective, and therefore by definition non-subjective, judgement.

### V.3 Application of the principle

It is not the purpose of this paper to predict how the principle of limited intervention will be implemented in the future. Neither is it to examine in detail the numerous consequences that derive from that principle. The study of those consequences belongs to the field of international relations, which will surely consider them along with many other new phenomena that have characterised the international order since the end of the Cold War. However, some comments on the application of the principle described thus far seem apposite. This section will consider successively: (1) the impact of the principle on the international system as represented in the UN Charter; (2) its impact on the idea of state sovereignty; (3) the use of the principle of limited intervention to promote human rights and 'universalism'; and (4) the role of major powers in the application and further development of the principle.

Firstly, how will the principle of limited intervention affect the international order and the UN Charter? The principle of limited intervention, along with the principle of collective intervention, constitutes a new version of the principle of non-intervention, which is one of the cornerstones of present international society according to the UN Charter. Therefore, the introduction of both these new principles does not imply any contradiction with the

UN Charter.<sup>139</sup> Rather, the principles of collective and limited intervention are natural developments of the international order that are intimately linked to other recent developments, such as the new role of the Security Council or enhanced respect for human rights. A reform of the UN Charter is thus not necessary, because the substance of principles is not specified in the Charter. Conversely, a reformulation of the Declaration on Principles (GA Resolution 2625 (XXV) of 24 October 1970), to review the contents of all principles and not just non-intervention, would be desirable.<sup>140</sup> The impact of the principle of limited intervention on the international order, however, will have to be reassessed if and when the Security Council becomes paralysed, as was the case during the Cold War. Many recent analyses, including perhaps this one, take it for granted that the Security Council will continue, as in the 1990s, to have an active role in the maintenance of international peace. If this is not the case, and the Security Council is blocked again because of recurrent vetoes, the principle of collective intervention will no longer be applicable, and the principle of non-intervention, as well as the rest of international constitutional norms, would need reformulation. In that new situation, the experience of collective and limited intervention would surely influence the redefinition of international principles concerning the use of armed force.

Secondly, how will the new principle of limited intervention affect the principle of state sovereignty? A consequence of limited (and collective) intervention that has been overstated in some quarters is a consequent diminution in the scope of state sovereignty. Some states from the South have explicitly declared that the acceptance of limited intervention has negative effects on world order, since intervention weakens the stance of the state, which is the central actor in international relations.<sup>141</sup> However, this

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<sup>139</sup> This view implies that limited intervention is an 'exception' to the primary role of the Security Council that accords with the international order. See opposing points of view in *Danish Report*, p. 128; *Kosovo Report*, p. 195; and Bruno Simma (1999).

<sup>140</sup> Martin Ortega, 'Naturaleza y evoluciones de los principios fundamentales del Derecho Internacional', *Revista Española de Derecho Internacional*, 1996-2, pp. 45-70.

<sup>141</sup> For example, President Abdelaziz Bouteflika of Algeria, at that time Chairman of the Organisation of African Unity, said to the General Assembly on 20 September 1999 that he 'did not deny the right of the public opinion of the northern hemisphere to denounce the breaches of human rights where they existed, and the United Nations had the right and the duty to help suffering humanity. However, the countries of the OAU remained extremely sensitive to any undermining of their sovereignty – not only because it was their final defence against the rules of an unequal world, but also because

proposition overlooks the fact that, since its inception in the sixteenth century, the idea of state sovereignty has evolved continuously. Indeed, the concept of sovereignty has been redefined profoundly in the last twenty years or so, owing to a wide range of factors, including the communications revolution, transnational movements, economic globalisation, the increasing role played by international organisations and the new relevance of the individual and human rights in international relations.<sup>142</sup> The principle of limited intervention does not impinge upon state sovereignty more than any other of those phenomena.

Thirdly, will the principle of limited intervention be employed to promote human rights and 'universalism'? Once established, the same principle of limited intervention might be interpreted and applied in various manners. In the international community, three attitudes might prevail with regard to the principle, which could be termed 'abstentionism', 'optimistic hegemonism' and 'universalism'. Despite the existence of the principle, the majority of international actors might decide first to abstain in the face of humanitarian crises that would require intervention. That was the case, for example, in Rwanda, where the international community failed to avert a genocide in 1994, when it declined to undertake either collective or state-led intervention. Justification of this attitude includes the argument that international intervention cannot solve the underlying local problems, and that civil war may be even a salutary phase in the historical evolution of some peoples. According to this argument, intervention from the outside world would somewhat impede the natural unfolding of events.<sup>143</sup> However, this point of view, based on a classic assumption on the nature of war,<sup>144</sup> overlooks the fact that, nowadays, the international community simply does not tolerate some inhumane situations. The second attitude could be named 'hegemonic

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they were not taking part either in the decision-making process by the Security Council, or in the monitoring of their implementation.' UN Press Release GA/9595.

<sup>142</sup> Amongst an expanding bibliography on this issue, see Joseph Camilleri & Jim Falk, *The end of sovereignty? The politics of a shrinking and fragmenting world* (Aldershot: Edward Elgar, 1992); and Stephen Krasner, *Sovereignty: organized hypocrisy* (Princeton, NJ: Princeton UP, 1999).

<sup>143</sup> See for example, Richard K. Betts, 'The delusion of impartial intervention', *Foreign Affairs*, November/December 1994; and Edward Luttwak, 'Give wars a chance', *Foreign Affairs*, July/August 1999.

<sup>144</sup> See Martin Ceadel, *Thinking about peace and war* (Oxford: Oxford University Press, 1989), chap. 3, 'Militarism'.



optimism'.<sup>145</sup> Representing this attitude, a recent work by Gülnur Aybet maintains that NATO constitutes the core of a 'Western security community', which seeks to promote and expand the same way of life that it had preserved during the Cold War.<sup>146</sup> With or without the blessing of the Security Council, this Western community would intervene militarily to impose Western values. However, as has been shown in this paper, the spirit that has inspired the development of the principles of collective and limited intervention does not correspond with that idea. Those principles have been created to uphold *global*, rather than Western, values and interests. Thus, the general attitude concerning military intervention that prevailed during the 1990s was 'universalism', and this is the attitude that *should* inspire the implementation of the principle of limited intervention in the future. In his book *The world at 2000*, Professor Fred Halliday has pointed out that 'radical universalism' is a worthy agenda for the twenty-first century. According to him, three values are at the very centre of this agenda: equality, democracy, and rights.<sup>147</sup> This 'universalist' agenda is relevant to military intervention. Indeed, to undertake limited uses of armed force that are consistent with that agenda is the real challenge facing us. Collective and limited interventions effectively contribute to international peace and security, and are actually in conformity with the purposes and principles of the UN Charter, if they advance equality, democracy and human rights at a global level. As was indicated in Chapter Three, collective and state-led interventions are legitimate when the international community as a whole supports them. This consensual approach, however, does not give any indication of when it is *legitimate* (in a more substantive sense this time) to undertake interventions that states are not ready or willing to carry out. Insistence on a universalist agenda is perhaps the only means to fill this gap.

Fourthly, the application and future evolution of the principle of limited intervention will depend on the will of major powers. In fact states, both big and small, are the arbitrators of its very existence. Some of the criticisms cast upon the principle must be considered in this light. The criteria presented in the first section of this chapter may be criticised because they impose some conditions whose application cannot reasonably be guaran-

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<sup>145</sup> This term is borrowed from Fred Halliday, *The world at 2000* (London: Palgrave, 2001), p. 30.

<sup>146</sup> Gülnur Aybet, *A European security architecture after the Cold War. Questions of Legitimacy* (London: Macmillan, 2000), pp. 30-5.

<sup>147</sup> Op. cit. in note 145, pp. 144-5.

teed. Equally, those criteria do not provide for valid mechanisms to avoid 'double standards' and 'abstentionism'. However, those flaws are simply unavoidable, not only as far as the principle of limited intervention is concerned but also with regard to any other principle of international relations. It goes without saying that, in spite of its changing role, the state continues to be the central actor in international relations. The principle has been created and will be implemented in a decentralised fashion, because there is no 'global government' that could be entitled to verify the respect of criteria and conditions of interventions.

The role of Western states in the implementation and further development of the principle is crucial indeed. The exchanges between the United States, the EU and NATO members, as well as Japan and other 'Western' states in the years to come will determine whether, in the face of humanitarian disasters that affect international peace and security, necessary military intervention will be undertaken, even in the absence of a mandate from the Security Council. Normally, those countries will continue to support intervention to uphold global values. But at the same time this of course means that implementation of the principle is not assured. The prevailing interpretation of national interests in Western countries during the 1990s permitted the enunciation of collective interests and, therefore, the undertaking of some costly military interventions. However, the situation might change. A more inward-looking foreign policy, a lack of understanding between those states, or simply an economic crisis, could lead to disengagement and abstentionism in the Western countries.

On the other hand, the role of other major players on the international scene, be it permanent members of the Security Council or other powerful states, is also crucial. It is obvious that limited intervention (and collective intervention, and some other principles) cannot be imposed forcefully upon powerful states, which implies an evident limit to the application of the principle, and to the principle itself. This can be illustrated with a comparison between the cases of Kosovo and Chechnya, but also by any other intervention which might directly affect a major state. Already at the beginning of the Cold War, the United States decided to intervene in the Korean civil war after having abstained in the Chinese civil war. As Yuen Foong Khong has pointed out: 'If China ranked number thirteen in 1947 in terms of its strategic value to US national security, Korea ranked fifteenth on a list of sixteen countries. As the ranking suggests, China mattered more than Korea

in the global balance of power. Yet it was in Korea, not China, that the United States intervened with air, naval, and ground forces to save the southern part from Communism. How is one to account for that?<sup>148</sup> The same commentator gives a number of plausible reasons, including that the 'loss' of China spurred the American reaction in Korea. Today, it is also difficult to explain 'double standards' for interventions that are intended to avert humanitarian disasters, but if the maintenance of international peace and security is also taken into account, an explanation is possible. In legal terms, the situations in Kosovo and Chechnya may have had some similarities. In both crises, governments fought civil wars against separatist movements in some areas of the state territory. Civil strife provoked harsh reactions on the part of governments, which included some dubious behaviour by the armed forces. The crisis in Chechnya gave rise to strong protests in Western countries, especially in December 1999 and shortly afterwards, as well as some calls for assistance to the Chechen rebels, and cogent sanctions against Russia. Some commentators believed that just a few months after NATO's intervention in Kosovo, Western response to the situation in Chechnya should have been more determined. However, two political circumstances made the situations in Kosovo and Chechnya very different. First, the Yugoslav government had (and the Russian government had not) a record of ethnic cleansing, war crimes, and crimes against humanity that justified fears of grave misbehaviour leading to genocide. Second, and more importantly, the Yugoslav authorities rejected NATO's intervention with the relatively modest means available to them, while Russia might have responded to an external intervention in a way that would have put international peace and security at risk. From a strictly political viewpoint, the issue was thus not Russia's membership of the Security Council but the possibility of a violent reaction to the intervention that would have constituted a serious threat to international peace.

In conclusion, this chapter has described the contents of the principle of limited intervention, following developments in the 1990s analysed in previous chapters. The new principle suggests that states may intervene in other states' territory in cases of overwhelming humanitarian catastrophe, even without the consent of the government and without authorisation from

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<sup>148</sup> Yuen Foong Khong, 'The United States and East Asia: challenges to the balance of power', in Ngaire Woods, ed., *Explaining international relations since 1945* (Oxford: Oxford University Press, 1996), p. 184.

the Security Council, provided some strict conditions are met. In so doing, interveners not only avert or stop humanitarian disasters but also contribute to the maintenance of international peace and security. Those conditions require, *inter alia*, that states which undertake intervention must have the appropriate means, must have verified that peaceful means to avert the catastrophe have been exhausted, and must employ only the force necessary to attain their objectives. Although the Security Council has primary responsibility, states may intervene when faced with a humanitarian catastrophe, even when it is not possible to get authorisation from the Council, if they have the support of the international community. Nevertheless, the correctness of state-led military interventions is linked to the number *and* democratic character of states that undertake it. In other circumstances, that is, when there is no humanitarian catastrophe, the obligation not to intervene applies. In particular, the mere existence of a civil war, a claim to self-determination, or a desire to impose or restore democracy or punish alleged international wrongdoings do not constitute valid justification for military intervention. Defined in this way, the principle of limited intervention does not require any change to the UN Charter.

# *Chapter Six*

## **THE EUROPEAN UNION, THE PETERSBERG MISSIONS AND INTERVENTION**

In the 1990s, European states' participation in collective interventions authorised by the UN Security Council, and in humanitarian interventions in northern Iraq, Kosovo and Sierra Leone, was remarkable. Indeed, Europeans have carried out legitimate interventions since 1945, but also some that were questionable and contrary to international order. In future, European countries will have to decide individually whether to continue to use force in other states, and if so in what way. However, the question that arises today is how the European Union as a body is to use the military instrument that it is preparing to set up. In 1999 the Cologne and Helsinki European Councils decided to create a rapid reaction force for crisis management, and much work has been done to implement that decision, as was noted at the Nice Council in December 2000. It is thus pertinent to speculate about whether that force, once operational, will be able to carry out interventions, and if so what type.

This chapter will endeavour to answer these questions in three stages. First, it will be necessary to look at the provisions of the Treaty on European Union and associated texts, as well as others dealing with European security, which give clear indications of the way the Union's force will be used. Next, an analysis of the probability that the European force will be used will be presented in the form of a commentary on the variables involved. Finally, the last section will present an exercise in forecasting, attempting to imagine how, with its military means, the EU might in a practical way help to uphold the values to which it subscribes. This analysis will of course take into account developments in the principle of non-intervention mentioned in earlier chapters.

### **VI.1 What the Treaty on European Union says**

One often hears it said that, although the EU is creating a military force, there is no indication of the way in which it will be used. That statement is not, however, correct. For a first indication of the various types of military operations that the EU will carry out in future, four main sources are

available: the first two are to be found in Article 11 of the TEU, which sets out the CFSP's objectives, and Article 17, which describes the so-called Petersberg missions as the main framework for the common European defence policy. The declarations of the European Councils of Cologne, Helsinki, Feira and Nice, which developed Article 17 of the TEU extensively, form the third source. Finally, all of the provisions related to the CFSP (particularly common strategies, actions and positions), which already make up a significant corpus, constitute the substance of the Union's foreign policy, which will certainly determine the employment of its armed forces. Two documents, of different origin, could be regarded as complementary sources: NATO's new Strategic Concept and the Common Concept of European security drawn up in November 1995 in Madrid by the 27 WEU countries. In this section, the aim is to examine all of these heterogeneous sources so as to understand better the current legal and political framework in which the EU will be able to use its military force.

Since the Maastricht Treaty, the overall aims of the CFSP have been mentioned in Article 11 of the TEU. Previously, European Political Cooperation was enshrined in the Single European Act of 1986, but the Act provided only for institutional mechanisms for coordination and cooperation on foreign policy issues, and no mention was made of the content of that policy. The inclusion of objectives in the Maastricht Treaty was not debated at length, although it radically altered the conception of the CFSP. These objectives introduced principles that both act as guidelines and set limits. The aim of these objectives is to define the Union's role in the world, whereas the general objectives of the European Community (Articles 2 and 6 of the Treaty establishing the European Community) refer only to general principles governing economic matters within the Community. The CFSP's objectives are far more reminiscent of the preambles and dogmatic sections of modern constitutions than they are of the *communautaire* freedoms found in Article 3 of the Treaty establishing the European Community. In fact the values and principles listed in constitutions, to which governments and other powers are always subject, lie at the heart of the idea of the modern state. Such a construct was introduced for the first time, *mutatis mutandis*, on the international scene with the Charter of the United Nations, in which the objectives and general principles of action of the Organisation and states are defined. At the 1945 San Francisco conference, the British representative said:

‘The purposes and the principles in [Articles 1 and 2 of the Charter] seem to me and to my Delegation of the highest importance. I think they introduce a new idea into international relations, for instead of trying to govern the actions of the members and the organs of the United Nations by precise and intricate codes of procedure, we have preferred to lay down purposes and principles under which they have to act. And by that means, we hope to insure that they act in conformity with the express desires of the nations assembled here, while, at the same time, we give them freedom to accommodate their actions to circumstances which today no man can foresee.’<sup>149</sup>

Having a legal nature somewhere between that of states and the United Nations, the EU has chosen to define objectives and principles having a similar value as guidelines. For the purposes of this paper, Article 11.1 of the TEU can be interpreted as follows.

*Article 11.1.* ‘The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:

- to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter[.]’ The common values are those set out in the constitutions of member states (in particular the three that are mentioned in the last sub-paragraph of Article 11.1). The reference to *fundamental* interests must be seen as a reworking of the concept of national interests (restricted to states). However, nowhere are the Union’s fundamental interests spelt out. Clearly, those interests are not simply the summation of the interests of member states, since those interests can be contradictory, but rather *common* interests lying midway between member states’ national interests and the global interests mentioned in Chapter Four. The ‘safeguard [of the] independence and integrity of the Union’ inevitably implies defence, since such safeguard can only be against external threats. The inclusion of ‘integrity’ in this Article by the Treaty of Amsterdam results from a proposal to include ‘territorial’ integrity. Even if the latter adjective was not retained, ‘integrity’ will always have a territorial dimension. The safe-

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<sup>149</sup> L. M. Goodrich, E. Hambro and A. P. Simons, *United Nations Charter. Commentary and documents*, 3<sup>rd</sup> edn. (New York: Columbia, 1969), p. 24.

guard of values, interests and independence must be 'in conformity with the principles of the United Nations Charter', which means that these principles prevail over the said safeguard and are the inspiration for it. If one accepts that this first sub-paragraph is the broadest of Article 11, the CFSP in its entirety should also be subordinate to the principles of the United Nations.

- 'to strengthen the security of the Union in all ways[.]' The phrase 'in all ways' implies a contemporary, extensive definition of security and establishes a conceptual link between the CFSP, the external relations included in the first pillar, and justice and home affairs. NATO's new Strategic Concept, and the Common Concept drawn up by WEU in 1995, will also help in an understanding of what 'in all ways' means.
- 'to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders[.]' This sub-paragraph expresses the will of the Union to participate in the maintenance of peace and security, and consequently it is the objective of the CFSP that most clearly envisages the possible projection of armed forces. The beginning of this sub-paragraph echoes the key terms used by the Security Council: 'to preserve peace' is an expression used in the Charter, but 'strengthen international security' forms part of the Council's current language. Clearly, the EU's contribution to this goal will be made in accordance with the principles of the United Nations Charter and the Helsinki Final Act. What, on the other hand, is less clear, is the reference to the 1990 Paris Charter. The sole objective of the Paris Charter, which differs slightly from the Helsinki Final Act, is a more specific formulation of the democratic principle. Neither is the final reference to external borders comprehensible at first sight, since the principles contained in these three texts never refer to 'external' borders but to international ones, the distinction between 'internal' and 'external' borders being an invention of the process of European integration. The clause can therefore be read either as a reaffirmation of classic principles (including a ban on the use of armed force) with respect to 'external' borders, or as the expression of the Union's specific interest in regions on its borders.



- ‘to promote international cooperation[.]’ One of the main objectives of the CFSP is to continue to take positive action in favour of the international cooperation, in its broadest sense, in which member states and the Community participate.
- ‘to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.’ Lastly, the CFSP is particularly concerned with these three fundamental values, which figure among the common values mentioned in the first sub-paragraph and are equally the three pillars of the Council of Europe.

As everybody knows, Article 17 of the TEU is the result of a compromise between two widely separated positions, and because of this a considerable amount of imagination is needed to understand it. Fortunately, the wording of the Article was simplified in the Treaty of Nice. However, it is accepted that, for all the governments represented at Amsterdam, paragraph 2, in which the formulation of Petersberg missions is reproduced, serves as a definition of the framework of the common European defence policy, thus ruling out any other possible constituent elements, such as collective defence.

*Article 17.2* reads: ‘Questions referred to in this Article shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.’

In 1997 the 15 chose to retain the language adopted by the nine WEU states at Petersberg in 1992 rather than work out a new description, as there was consensus on a text that allowed for various interpretations. The three types of mission envisaged at Petersberg cover a complete range of possible measures, from the most modest to the most robust. However, the useful ‘constructive ambiguity’ used at Amsterdam also retains some of the uncertainties inherited from the past. If the text is to be interpreted as its authors conceived it in June 1992, it must be done in that context. The type of humanitarian and rescue tasks that the ministers had in mind at that time were probably Operation *Provide Comfort* in northern Iraq and the evacuation of Europeans from Zaire by Belgian and French troops in September 1991; the peacekeeping tasks were in particular interposition missions but also so-called second generation operations which then existed, such as that of UNPROFOR, created in 1992; as for tasks of combat forces in crisis

management, the most striking example was certainly the allied action against Iraq. A notable witness, Willem van Eekelen, has explained that in fact the last category included coercive measures: 'The inclusion of the word "peacemaking" was interpreted as peace-enforcement, in line with the jargon used at the time. It was used because Germany found it difficult to accept an earlier version: "tasks of combat forces in crisis management, limited armed conflict and armed conflict".'<sup>150</sup> At Petersberg, the German presidency did not wish to hamper definition of the most ambitious category of new WEU operations, since at the time the German government was already advocating the development later adopted through the Constitutional Court's ruling of 12 July 1994. In order to overcome the difficulties posed by Germany, the third category of Petersberg mission was included, but with the addition of a clause that stated: 'Participation in specific operations will remain a sovereign decision of member States in accordance with national constitutions.' However, in June 1992 the United Nations Secretary-General also launched *A Programme for Peace* that introduced a new definition of terms but was to have no effect on the content of the Petersberg Declaration. It is in that light that one has to interpret the divergence between the French word *rétablissement* (re-establishment) and the English 'peacemaking', a divergence that did not exist at Petersberg but appeared with the subsequent use of these terms within the United Nations. What is more, the reference to 'tasks of combat forces in crisis management' found in Article 17.2 is sufficiently clear for an understanding of the third category.

Taking these points into account, the three categories are understandable, even if it is obvious that both humanitarian missions and peacekeeping may sometimes require coercive action, as has recently been seen. Nevertheless, the Petersberg Declaration established an implicit subordination of the use of force by WEU to the Security Council, a relationship that has not been echoed in the TEU. In 1992 the nine WEU countries affirmed that 'Decisions to use military units answerable to WEU will be taken by the WEU Council in accordance with the provisions of the UN Charter.' In addition, states declared that they were 'prepared to support, on a case-by-case basis and in accordance with our own procedures, the effective implementation of conflict-prevention and crisis-management measures, including peacekeep-

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<sup>150</sup> Willem van Eekelen, *Debating European Security, 1948-1998* (The Hague, Brussels: SDU-CEPS, 1998), p. 127.

ing activities of the CSCE or the United Nations Security Council.' It should be noted that the TEU has deliberately omitted any link between the Petersberg missions and a Security Council mandate, but has on the other hand included reference to the principles of the UN Charter in Article 11.1 (paragraphs 1 and 3).

After Articles 11 and 17 of the TEU, the third indication of the way in which Europe could use military force is found in the development of a European security and defence policy (ESDP) since the Cologne European Council of June 1999, which goes beyond certain aspects of the general framework of Article 17 of the TEU, in particular institutional aspects, but not beyond the definition of the missions in paragraph 2 of that Article. At the Cologne, Helsinki, Feira and Nice European Councils, member states' governments pursued their planning of a rapid reaction force for crisis management, introducing the necessary institutional changes, without becoming bogged down in endless debates on reform of the Treaty. The conclusions of the European Councils define the nature and size of the force, establish the method by which decisions will be taken on its use and on the participation of member and non-member states, stating that it is to be operational in 2003. It is of course true that the technical details that have been defined, such as its projection capability, its viability, its interoperability, its flexibility and its future operational requirements give a fairly good indication of the type of force that the EU is setting up, and consequently the type of operation that it will be able to execute. However, on the use of the force the various presidential conclusions continually repeat the keyword Petersberg, and its content established by Article 17 of the TEU, emphasising that it is a question of creating the ability to carry out all the Petersberg missions, including the most demanding of them. At the Capabilities Commitment Conference held in Brussels on 20 November 2000, the 15 did not need to develop the possible content of the Petersberg missions. At the time it was sufficient to consider three scenarios that draw largely on WEU illustrative missions drawn up by NATO in 1998.<sup>151</sup> Very roughly, those missions could be: (1) the evacuation of about 1,000 European citizens from an area of crisis situated 10,000 km from Brussels; (2) a conflict-prevention operation following a rise in tension on the border

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<sup>151</sup> See *WEU today* (Brussels: WEU Secretariat-General, March 1998), sections I.II and II.II; and Frank Boland, 'Force planning in the new NATO', *NATO Review*, vol. 46-3, Autumn 1998.

between two states; (3) the imposition of a demilitarised zone to separate two warring factions in a territory 4,000 km from Brussels.<sup>152</sup>

All the conclusions of European Councils refer to the idea that, possessing its own force, the EU 'will thereby increase its ability to contribute to international peace and security in accordance with the principles of the UN Charter' (Cologne). However, just after the operation in Kosovo, the Helsinki Council stressed the concept of responsibility (first introduced in Cologne and reiterated in Feira) where member states said that military capabilities would be developed so that they could 'assume their responsibilities across the full range of conflict prevention and crisis management tasks defined in the EU Treaty'. In sum, the texts of European Councils are useful, since they give a fairly precise idea of the nature and capability of the force, but as far as its employment is concerned, generic reference to the Petersberg missions, and to crisis prevention and military crisis management, leaves open the question whether crises are managed with or without the consent of the states concerned, and with or without a Security Council mandate.

The body of documents that define the CFSP also provide an authoritative indication of how the European force will be used. Since the Cologne Declaration, it is established that the new military crisis management capability is in support of the CFSP, and that was underlined at Helsinki:

'All these measures will be taken in support of the Common Foreign and Security Policy and they will reinforce and extend the Union's comprehensive external role. With the enhancement and concertation of military and civilian crisis response tools, the Union will be able to resort to the whole range of instruments from diplomatic activity, humanitarian assistance and economic measures to civilian policing and military crisis management operations.'

It is neither necessary nor possible to mention here the extensive content of the CFSP; however, the following principle has to be formulated: the use of the European force should be consistent with the CFSP. The sum of common strategies and positions, joint actions and other declarations, make up a strategic vision of the world that is underwritten by the member states in

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<sup>152</sup> See *Le Figaro*, 21 novembre 2000.

which the notions of association, partnership, commercial exchanges and cooperation dominate the scene. The use of the European force in a way that is counter to the spirit of the CFSP in general, and to its realisation in the case of a particular region, is unthinkable.

Alongside these four main sources (Articles 11.1 and 17.2 of the TEU, the emerging ESDP, and CFSP), two complementary sources also provide indications. In the first place, the Atlantic Alliance's Strategic Concept of April 1999 was subscribed to by 11 EU member states, representing over 90 per cent of the population of the EU, together with six other European and two North American allies. It is obvious that the Strategic Concept is not that of the EU, as a comparison of the former and the contents of the CFSP shows. However, to the extent that the European force will be polyvalent and could be used in connection with NATO operations (in the CJTF context), and since NATO may provide capabilities for EU-led operations, the provisions of the Strategic Concept must be taken into account. Moreover, if in time the EU were to draw up its own strategic concept, it is likely that it would include certain aspects of NATO's. This proposition is supported by a comparative reading of NATO's 1991 Strategic Concept and that of 1999, and the common European security concept set out by the 27 WEU states in November 1995, which is the second additional suggested source. The Common Concept of 1995, which in places coincides with NATO's concepts, but also includes new points, suggests how the Europeans could if required develop a strategic concept of their own. Certain declarations in the Common Concept are very interesting in this respect. They indicate, for example, great faith in principles such as democracy, human rights and the rule of law:

'[These principles] ensure that national armed forces, and the machinery of government as a whole, are properly answerable to public opinion and democratic institutions and cannot be used as an instrument of oppression either inside or beyond the state.' (para. 20)

Adherence to these principles is assured by international institutions, but European states declare their readiness to ensure that those principles are respected in any case:

' . . . neither the UN nor other multilateral institutions are yet in a position to meet all the new challenges they face . . . European states have com-

mitted themselves both to the purposes and principles of the UN Charter and – on the basis of shared values – support efforts to pre-empt and correct breaches of those principles by others.’ (paras. 20 and 21)

Furthermore, the European states have expressed their concern that the security of their nationals should be guaranteed everywhere in the world:

‘There are large numbers of European citizens living and working abroad, many in unstable or dangerous areas. Many more travel abroad on a short-term basis. Their security, over and above that provided by the countries where they are present, is the responsibility of national authorities.’ (para. 28)

In conclusion, contrary to the beliefs of those who maintain that no guidelines have been foreseen for the use of the EU force, the present political and legal framework provides a number of indications of how and why this force will be employed. Nothing prevents a more precise definition of missions from being stated in a future version of the Treaty or at the time a European strategic concept is being drawn up, but for the moment the guiding principles given in Article 11.1 of the TEU and the content of the CFSP form a substantial and fairly structured framework for the use of the force. Moreover, the definition of the Petersberg missions and the type of force that will be set up give a good idea of its nature and capabilities. EU member states wish to contribute to international peace and security in coordination with the United Nations’ actions, which means that the European force will normally operate under the aegis of the Security Council. However, the framework examined here allows for the possibility of action to prevent and manage crises without the agreement of the states concerned and without the prior authorisation of the Security Council, even if it is also evident that in any case principles of the UN Charter must be respected. This is quite consistent with the development during the 1990s, at a global level but with the active participation of European states, of the principle of limited intervention, as described in earlier chapters.

A final question remains: in any subsequent reform of the TEU, should the circumstances in which EU military interventions may be carried out be specified in greater detail? Or should a European strategic concept be negotiated and agreed? Since the European Council in Cologne, member states’ governments have chosen to continue with the development of an

ESDP and the creation of a European rapid reaction force for crisis management, and to introduce the necessary institutional changes, without dealing with these issues in detail at the intergovernmental conference of 2000. Indeed, this solution was the most flexible and perhaps the only effective way of keeping up the momentum generated by the St-Malo process and the Kosovo operation. A few reforms must nevertheless be introduced by the new intergovernmental conference planned for 2004, which should re-work Article 17.

There are various arguments in favour of the inclusion of a specific treatment of the question of intervention in the Treaty. On the one hand, the member states will be able to use the occasion to voice their support for the development of a principle of limited intervention that observes the purposes and principles of the Charter of the United Nations. Neighbouring and third states with which the EU has partnership and cooperation relationships will thus be aware that the EU has no interventionist ambitions, and that the EU force will only be used under the authority of the Security Council or in order to enforce UN principles. On the other hand, however, detailed reference to the circumstances in which the EU could intervene may be counterproductive, especially since such situations cannot be predicted except in very general terms. Moreover, a definition of situations could be interpreted unfavourably outside the EU and perceived as an intention to make unjustified interventions, which is not the case.

There would appear to be two options that are compatible: reform of the TEU and the drawing up of a European strategic concept. As far as reform of the Treaty is concerned, this section has shown that it includes helpful indications as it stands at present. As a result, the structure of the Treaty should be preserved in any future reform, but it will probably be necessary to update it. Firstly, the aims of the CFSP should include both conflict prevention and post-conflict reconstruction as well as crisis management, three terms that are now well established but were not sufficiently well developed in 1991. In addition, any future Article 17 will have to specify that the Union's military means are to be used in support of the CFSP, a recurrent theme in European Councils. Equally, the Petersberg missions should be maintained even if their formulation could be brought up to date. A clearer wording would probably show that there are four types of missions: evacuation, humanitarian, peacekeeping and crisis management, the latter including the use of combat forces. The EU's increased interest in the

European region could also be mentioned. Finally, the EU's commitment to the principles of human rights and those set out in the Charter of the United Nations could equally be confirmed. As far as the second option is concerned, the creation of a European strategic concept, as a political text that develops Articles 11 and 17, is necessary but the question is when such a concept could be adopted. The content of the European and NATO concepts will have to be absolutely consistent; it therefore seems reasonable to wait until the political relationship between NATO and the EU has been sufficiently well established before working out the European concept.

## **VI.2 The future of EU intervention**

The texts mentioned thus far give valuable indications of the way in which the EU might use military force, but many questions remain unanswered. International events being by their very nature impossible to predict, states or organisations such as the EU cannot foresee the way in which they ought to use their force. Future military action by the EU will thus depend on a number of complex variables *internal* to the Union, but also *external* factors, that is to say dependent on the way international relations develop, stability in the European region and continuity in the principles of collective intervention and limited intervention. This section will look at the *internal variables*, in particular the consent of member states, whilst external factors will be analysed in the last section of the chapter.

The probability that the EU will undertake a military intervention depends in the first instance on a combination of several *internal* factors, in particular the consent of member states. However, the consent of the 15 will doubtless be linked to NATO's position, as well as to the existence of a Security Council mandate. Therefore the consent of member states as well as the *perception* within the Union of NATO's position and of the existence of a Security Council mandate are three factors that can be considered to be *internal*, and must be taken into account together. In the event of a crisis, EU member states will have to weigh up all the possible ways in which it can be dealt with: by individual states, by an ad hoc group, by the EU or by NATO. All options will normally be considered and the final decision, which will be a political one, will depend on the interests at stake, the capabilities available and the will to react in order to resolve the crisis. In the exchange of views among states, the Security Council will always have



a role to play. If it arrives at an agreement, the general conditions for intervention (with or without the consent of the state concerned) will be defined in the relevant resolutions. If no agreement is reached at the UN level, the EU members will none the less have to decide whether military action is necessary. During this process they will, with their NATO allies, evaluate the legitimacy, moral obligation and political expediency examined in earlier chapters, and may conclude that the use of force is necessary, as was the case in Kosovo and Sierra Leone.

When deciding whether the EU is the appropriate body to take action, the first practical question to be answered is: what is the added value of an EU military action compared with individual actions by member states on the one hand and NATO action on the other? There may be military operations in which the participation of all member states is unnecessary or perhaps even a hindrance. The operations to evacuate European nationals from Zaire (carried out by Belgium and France in 1991), Operation *Turquoise* in Rwanda (France, 1994, following UN Security Council Resolution 929) and the operation in Sierra Leone (United Kingdom, 2000) were carried out by member states that possessed the means and had good local knowledge of the area and the situation. Nevertheless, a decision by the EU to endorse the operation could be useful, even desirable for the state carrying out the operation, since it could give it added legitimacy internationally. Moreover, having EU support implies that the EU could put its assets and capabilities (for example, the Satellite Centre) at the disposal of the state or states involved and, if the situation were to worsen, the other states could still give military support with the forces made available to the EU. In addition, a military operation carried out by several European states under an EU flag strengthens the latter's image. For example, an EU-led operation similar to Operation *Alba* (Albania, 1997) would strengthen its presence in the region. Nevertheless, member states that have the appropriate capabilities will in the foreseeable future always have a choice between individual actions or those carried out via the EU.

Concerning NATO, the majority of EU members, which are also members of the Atlantic Alliance and have subscribed to its Strategic Concept, consider that NATO is the best instrument for managing certain crises, as was seen in the actions in Bosnia in 1995 (with a Security Council mandate) and Kosovo (without a mandate). However, it may well be that in future the EU option will be preferable: in particular the United States may perhaps

judge it useful for the EU to lead small-scale military operations (like, for example, the land demining operation in Croatia, coordinated by WEU, or Operation *Alba*, led by Italy), or operations in regions where no strategic interests are involved (such as those in certain regions of sub-Saharan Africa or that in East Timor, for example). On the other hand, if it is a question of a more robust operation (the Gulf in 1991, Bosnia or Kosovo) or if they are to be mounted in sensitive regions (like the Middle East), the United States would probably not wish the EU to carry them out independently or with resort to NATO resources. In the grey area between these two extremes (for example complex peacekeeping operations in Europe, or even peace implementation, as in IFOR, SFOR and KFOR), political circumstances will determine, on a case-by-case basis, whether the operation is to be led by the EU or NATO. Several EU members have always displayed a preference for the Atlantic Alliance in security and defence matters. If that continues to be the case, those states will always be in favour of operations being led by the Alliance. That being so, the presence of genuinely 'Atlanticist' states among the 15 is the best guarantee that US views on who is to employ military force and how in the event of a crisis will be duly taken into account by the EU.

That observation leads to an examination of another factor connected with the political will of EU member states: the possibility of taking decisions on the use of force by methods other than unanimity. The intergovernmental conference that led to the Treaty of Nice introduced more flexible rules on decision-making, but those rules cannot be applied to military or defence matters. In this author's opinion, constructive abstention as referred to in Article 23.1 of the TEU could be a very useful instrument for decision-making on military interventions. One or more states will be able to declare formally that they are abstaining from a decision to launch a military operation but will be obliged to give their political support. This will allow governments of countries whose internal political situation is delicate, or states that have specific interests in or are in close proximity to the area of crisis, to qualify their position on EU military action. On the other hand, where a decision cannot be arrived at by the Council in accordance with Article 23, a group of member states will still be able to decide on military action outside the institutional framework. Such situations will be the most difficult for the coherence of the Union, since the mutual political solidarity referred to in Article 11.2 of the TEU will no longer apply, in the absence of a Union policy, and the requirement to consult and coordinate of Articles 16

and 19 of the Treaty will be difficult to meet. As a result, the real challenge that military intervention poses for the EU is not intervention decided by the Council (even with abstentions), with or without a Security Council mandate, but intervention by certain member states without the agreement of the others. In the past, European states have on occasion adopted more or less explicitly contrary attitudes vis-à-vis interventions by other Europeans (for instance, the Anglo-French intervention in Suez in 1956 and Anglo-American implementation of the air exclusion zone in southern Iraq). In this respect, two points should be mentioned: firstly, the European states (and, moreover, the international community as a whole) have clearly condemned colonialist or imperialist interventions. Secondly, one must bear in mind the rule that an intervention is presumed legitimate if it is decided upon and supported by a significant number of democratic states.

The other variable that will affect decisions by European states on the use of military force will be the question of prior authorisation by the Security Council. In this *Chaillot Paper* it has been shown that such a mandate for intervention in other states is necessary, but that it is also possible to proceed even without one if the sufficient conditions prevail. In general terms, the EU member states contributed actively to the creation of the principle of limited intervention during the 1990s, since most of them participated in the operation in Kosovo, and all of them supported it. France and the United Kingdom have also carried out legitimate interventions in the recent past. Equally, the TEU in its present form does not explicitly impose an obligation to obtain Security Council authorisation for crisis-management operations. However, all member states have agreed that it is appropriate to have that authorisation and, during the Kosovo operation, a few of them had difficulties, for example concerning the lack of a mandate (Austria) and continued political support (Greece). This dichotomy implies that military intervention by EU forces without Security Council authorisation will be very unlikely. Misgivings over the lack of a mandate will only be overcome when, as was the case in Kosovo, the existence of a humanitarian catastrophe or a threat to stability generates a feeling of overwhelming urgency in all member states. However, if in the future the Security Council cannot continue to follow a policy of collective intervention, the EU's role (and, moreover, that of NATO) may increase. It is quite possible that, in the eyes of the Europeans, the emergence of the principle of limited intervention has opened the way to more determined actions in the event of stalemate in the Security Council.

The combination of these three factors – the political will of member states, NATO's position and an SC mandate – leads to the following conclusion: crisis-management actions by the European force will in the foreseeable future be operations that are undertaken with the consent of the states concerned and carried out in pursuance of UN Security Council resolutions. Nevertheless, EU military intervention in the absence of a Security Council mandate are possible but very unlikely. On the other hand, the institutional framework in which legitimate interventions without a mandate, in cases of extreme necessity, seem more likely to be made is that of NATO.

### **VI.3 The interventionism of states and of the Union**

The use of European military force will depend on *internal* variables, but also on *external* factors. These variables are essentially of three types: first, the emergence of new crises in the European region, such as the existence of an authoritarian regime that encourages internal oppression and is responsible for serious destabilisation or aggression; second, the possibility of a humanitarian catastrophe in other regions, such as occurred in Rwanda, East Timor or Sierra Leone; third, the development of the principles of collective intervention and limited intervention, in other words continued Security Council action as an essential peacekeeping instrument.

Following the spectacular downfall of Slobodan Milosevic in Yugoslavia, and thanks to international control of key regions in South-Eastern Europe, action by the European force on the Continent could in theory be restricted to taking over tasks already begun. On the other hand, the risk of destabilisation and humanitarian crises in more distant regions is still high. The EU could in particular offer support to UN regional peacekeeping operations in sub-Saharan Africa. However, attempts to predict the future should stop there. Frankly, it is impossible to foresee tomorrow's crises, even if future emulators of Saddam Hussein and Slobodan Milosevic who may contemplate genocide or crimes against humanity would be wise to ponder on the lessons of the 1990s before embarking on such macabre ventures.

Be that as it may, as regards the possible future use of the EU's force in other regions, possible reactions in these regions should also be taken into account. Fears that the European force could be used in contravention of the principles of the UN Charter are exaggerated, since they fail to take account

of the existence of many internal restrictions on the use of that force. The so-called *internal* variables also have external implications. The requirement to obtain the consent of all member states, the implicit agreement of NATO, observance of the provisions of the CFSP and the emphasis that member states put on the role of the Security Council suggest that use of the force for unjust purposes is unthinkable. The Union is creating a force so that it has an appropriate instrument for the prevention and management of crises that are prejudicial to international peace and security, particularly European peace and security, in accordance with United Nations purposes and principles. But above all, the actor taking the force in hand is not a state burdened by a history that goes back to the dawn of time and more or less dubious interests; it is a new actor, a union of states, and the fact that those states will have to set aside their historical baggage and coordinate their perceptions of the world and their military doctrines should ensure that the force's objectives will always be legitimate. As indicated earlier, the real problem will be whether the force can be used by one or several member states against the advice of the others.

The fact that the new entity possessing a capability to intervene is the European Union is of great importance. To take a practical example, the Mediterranean region, it has to be recognised that European states have made questionable interventions in this area in the past, but is it likely that 15 democratic states would agree unanimously to impose upon another country in the region? The EU's Common Strategy on the Mediterranean and its Euro-Mediterranean partnership imply a European commitment to the stability and development of the region. Is an EU military intervention, which would be in complete opposition to these concepts, imaginable? Moreover, the principles set out in the Barcelona Declaration link the states to the north and south of the Mediterranean, and, again, the EU could not use its military force in contravention of those principles or those enshrined in the UN Charter. From a broader point of view, the EU has embarked upon a new type of process in which it has assumed historical responsibilities. As the EU has established very ambitious objectives for its foreign policy, it has committed itself not only in the Mediterranean but everywhere in the world. As a result, its military force is today not intended to be used to conquer the world, nor to profit from the resources of other peoples. On the contrary, the EU's force should rather be used for the establishment of peace and stability, in close association with the United Nations. The

countries of Europe in fact count among the UN's leading defenders and contributors.

The EU and its member states should multiply their efforts to explain to their allies in NATO, on the one hand, and to their neighbours and partners on the other, the new political significance of the EU military force. Indeed, in a world where, historically, the international scene has been dominated by a struggle for power between states, it is difficult to comprehend the new role that a union of 15 states could play. For that reason the EU should continue to strengthen the policy of transparency that it has pursued until now. Coming back again to the Mediterranean, partnership measures in the military domain (similar to those that exist in the form of the NATO and WEU dialogues) should be considered. Going beyond transparency and partnership, there are many possibilities for military cooperation between the EU and the Mediterranean countries, for example in the fields of peacekeeping, land mine clearance, surveillance of maritime traffic or civil-military relations.

When defining its CFSP, the EU did not take the historical approach of basing it on the expansion of military power; nor did it base it on the notion of a 'clash of civilisations' or on other concepts taken from the realist or neo-realist international relations tradition. Rather, the CFSP, with the importance it attaches to the concepts of partnership, cooperation and conflict prevention, is based on concepts belonging to the liberal or rationalist tradition of international relations, such as the peaceful resolution of disputes, economic exchanges and integration, and 'democratic peace'.<sup>153</sup> The EU will therefore not be a 'power' in the traditional sense that seeks to impose itself on other powers; on the contrary, it can be expected that it will pursue its objectives with determination but above all using peaceful means.<sup>154</sup> In other words, the EU's military capability will, like the CFSP, be founded on an awareness of the existence of several worlds on the same

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<sup>153</sup> See Martin Wight, *International Theory: the three traditions* (Leicester: Leicester University Press, 1991); and Ben Rosamond, *Theories of European Integration* (London: Macmillan, 2000), Chapter 7.

<sup>154</sup> This issue, however, will probably provoke a lively debate. Cf. Nicole Gnesotto, *La puissance et l'Europe* (Paris: Presses de Sciences Po, 1998), p.121 and Jolyon Howorth, 'European integration and defence: the ultimate challenge', *Chaillot Paper* 43 (Paris: Institute for Security Studies of WEU, November 2000), p. 92.

planet or, as Robert Cooper has suggested,<sup>155</sup> the coexistence, at the close of the twentieth century, of post-modern, modern and pre-modern worlds. This 'clash of historical periods' can no longer be exploited as it was in the colonial era: on the other hand, it puts upon the EU a special responsibility to prevent violent confrontation in 'modern' areas (in which post-modern military means could be used), and to attempt to accelerate history in 'pre-modern' regions.

The last 'variable' that must not be forgotten is the capability of the Security Council to react in the event of crises and conflicts. The 1990s showed that the Council was an important forum of consultation among the permanent members and a powerful tool for defining in broad terms the conditions of crisis management and peacekeeping in the world. However, the period 1945 to 1990 showed that the Security Council can also be a useless and paralysed body if the permanent members wish to use their veto to such effect. If such a situation arises again in future, then, to use Nicole Gnesotto's expression, the systems of law and values that are implicit in the UN Charter but have only prevailed since the end of the Cold War will be replaced by a power system that has always existed and underlies the Charter.<sup>156</sup> Should that situation arise, the role of both EU and NATO member states will grow in importance, as will that of these organisations as such. If the Security Council cannot reach agreement, the use of force, which may be necessary on occasion, will have to be carefully weighed up. In such a situation, it is clear that it will be the states that respect the Charter's principles most that become the guardians of the spirit of the United Nations. The responsibilities of the EU and NATO will then be all the heavier, since there will be new powers with nuclear and other weapons of mass destruction. Their responsibilities will equally be heavier since their member countries will have to defend the core values of international order, such as the prevention of aggression, human rights and democracy.

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<sup>155</sup> Robert Cooper, 'Is there a new world order?', in Geoff Mulgan (ed.), *Life after politics* (London: Fontana, 1997), p. 312.

<sup>156</sup> Nicole Gnesotto, 'La sécurité internationale au début du XXIème siècle', *RAMSES 2000* (Paris: Dunod for IFRI, 2000), pp. 202-3.





## *Conclusion*

To couple the two subjects of the title of this *Chaillot Paper* – military intervention and the European Union – would have been unthinkable just two years ago. Two historic developments, however, have made possible this association. Firstly, NATO's military operation in Kosovo from March to June 1999, which was undertaken without a mandate from the Security Council, brought the question of military intervention to the fore. The intervention in Kosovo was considered legitimate by the majority of the international community and was implicitly recognised by the Security Council. Yet the question remains, to what extent has the principle of non-intervention as defined during the Cold War changed after Kosovo? Indeed, the principle has been transformed regarding the relationship between the Security Council and states owing to a broad interpretation of Chapter VII of the UN Charter during the 1990s. That still, however, leaves the question, in what circumstances can states intervene in other states? In this paper, the answer that emerges is that the principle of *collective intervention*, but also a new principle of *limited intervention* have replaced the old legalistic principle of non-intervention, which was so strict that it could not meet the demands of the unstoppable process of globalisation and the increasing demands of respect for human rights.

Secondly, the European Union is establishing a military force with an aim to preserving peace and strengthening international security, in accordance with the principles of the UN Charter. Following the incorporation of the Petersberg missions in the Treaty on European Union, the European Councils of Cologne and Helsinki in 1999 decided to create a rapid reaction force to accomplish those missions that will be operational in 2003. Leaving aside the uses of force that member states might individually undertake in the future, the question now is, what type of operations will the EU force carry out? Will it be used for military interventions? The EU force will be employed to supplement the EU's Common Foreign and Security Policy, which is guided by the concepts of partnership and cooperation, and values such as human rights and democracy. The fact that the EU is a unique international actor in which the national positions of member states must be combined and accommodated guarantees that the EU will only undertake military operations to reinforce international peace, and in accordance with the principles of the UN Charter. The EU force will thus be employed essentially in operations sanctioned by the Security Council. However, the

development of the new principle of limited intervention suggests that the EU force should also be employed in cases of extreme necessity, that is, humanitarian catastrophes that put at risk international peace, even in the absence of a mandate from the Security Council.

State sovereignty and non-intervention have always been fundamental principles that have helped to guarantee the international order. Since 1990, however, non-intervention has no longer represented an undisputed value in international relations. Although states continue to be the basic units of political legitimacy, and are therefore entitled to a wide degree of autonomy, three developments have nuanced the former all-encompassing version of the principle of sovereignty. First, a novel agreement amongst the permanent members of the Security Council has led to its active involvement in international and internal crises and conflicts, through the adoption of significant collective measures. These measures, ranging from peacekeeping operations to economic sanctions, political tutelage of some states and territories, establishment of international tribunals to implement humanitarian law, and the authorisation of the use of force, have often been executed without the consent of the governments concerned. Second, the recognition that human rights are a central value of international relations has also affected previous conceptions of state sovereignty. Indeed, the fact that some governments are the worst violators of their citizens' human rights has been widely condemned since the end of the Cold War. The international community no longer tolerates use of the question of state boundaries as an alibi to cover the abuse of human rights. Third, during the 1990s, some states decided to intervene in other countries for the right reasons, notably to avert overwhelming humanitarian catastrophes, and with the right means, and this was generally considered acceptable by the international society. Some precedents of selective interventions to rescue nationals abroad, as well as some cases of intervention for self-defence purposes in the 1970s,<sup>157</sup> which actually alleviated humanitarian disasters and contributed to stability, have lately been regarded as legitimate. In the 1990s, four cases of state-led intervention (ECOMOG intervention in Liberia, from August 1990; Operation *Provide Comfort* in northern Iraq, April 1991; NATO's intervention in

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<sup>157</sup> India's intervention in East Pakistan, November 1971; Vietnam's intervention in Cambodia, December 1978; France's intervention in Central Africa, September 1979; and Tanzania's intervention in Uganda, November 1979.

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Kosovo, March-June 1999; and British intervention in Sierra Leone, from May 2000) have also been considered legitimate.

Leaving aside collective interventions decided by the Security Council, in this *Chaillot Paper*, the legality, legitimacy and political dimension of state-led military interventions, i.e., decided by states, have been analysed. As far as their legality is concerned, the divergence between the lack of legality of certain interventions and their perceived legitimacy has led to the reformulation of legal rules. Therefore, following the aforementioned precedents, a customary norm that recognises intervention under strict conditions has been developed. NATO's intervention in Kosovo 'crystallised' (i.e. established) the custom and the British intervention in Sierra Leone confirmed its existence. The lack of criticism vis-à-vis the British intervention and the indecisive condemnation of NATO's intervention by some countries, commented on in Chapter Three, corroborate the existence of a general *opinio iuris* in favour of certain interventions. The custom in international law is the legal materialisation of the new principle of limited intervention.

The legitimacy of military interventions is provided by the conviction among a clear majority of the international community that the use of armed force is correct and acceptable. As defined in this paper, the international community includes a plurality of actors, such as scholarly authors, public opinion, the media, NGOs, states considered individually, state consensus and international organisations. Analysis of these 'building blocks' confirms that limited intervention has been widely accepted since the beginning of the 1990s. In particular, Western public opinion and states have been the driving forces for intervention in some humanitarian crises. The rationale has always been that the international community should react in the face of massive violations of human rights. The reluctance shown by some countries, particularly after the intervention in Kosovo, to acknowledge that the old version of the principle of non-intervention is changing, has not been confirmed through decisive political action. Their scepticism about limited humanitarian intervention, and sometimes also about collective intervention mandated by the Security Council, stems from an obsolete conception of state sovereignty.

With regard to the political element, the classical approach considered solely the advantages and risks for the intervener, as well as the practical aspects of the military operation. National interests of major powers usually

pushed countries towards intervention, with disregard for the interests and even the basic rights of target states and their citizens. In contrast, the new approach to the political dimension must investigate whether and when intervention is advantageous for international peace and security. Therefore, national interests must be replaced by collective interests. In the 1990s, the search for common grounds to undertake interventions was done through negotiations between states in the Security Council, and in regional and ad hoc frameworks. Obviously, interventions decided and carried out multilaterally present new, complex problems as regards coordination. However, this is unavoidable if a multilateral approach is to be maintained. Member states of the EU, and the United States under both Clinton administrations, have followed a multilateral approach to military intervention during the 1990s, which guaranteed the legitimacy of the use of force.

Analysis of the three dimensions (legality, legitimacy and political expediency) leads to a description of the new principle of limited intervention, from a European standpoint, through the identification of its main components.

*Whether and when to intervene?*

1. States may intervene to avert overwhelming humanitarian catastrophes that put at risk international peace and security.
2. Diplomatic efforts and other peaceful means must have been exhausted.
3. In particularly serious humanitarian situations, there is an obligation to intervene.
4. Specific intervention to rescue nationals is allowed under certain conditions.

*How should an intervention be realised?*

5. Military force must be proportionate to the humanitarian objective, and must respect international humanitarian law.

*Who may intervene?*

6. Any state having the appropriate means may intervene to stop a humanitarian catastrophe.
7. The correctness of a given intervention is in direct proportion to the number of states that undertake it, and to their democratic character.

*The primary responsibility of the UN Security Council*

8. State-led intervention is possible only when the Security Council is unable to act but there is support from the international community.

Being a new manifestation of the principle of non-intervention, the new principle also includes a rejection of any other forms of intervention. Consequently, intervention in civil wars, to support self-determination, to restore or impose democracy, or to punish alleged international wrongdoings are not permitted. Neither this new principle in international relations nor the principle of collective intervention impinges upon the UN Charter, which therefore need not necessarily be reformed to take account of changes in the substance of principles. However, evolutions of the principles' contents should rather be reflected in political declarations.

Recent developments of the principle of non-intervention are very relevant for European states and for the European Union alike. European states contributed actively to the development of both collective intervention and limited intervention in the 1990s, but in the past they have also carried out unacceptable interventions. It is of course up to them, individually, to decide to what extent they will follow one path rather than the other in the future. For the European Union, the continued effectiveness of the Security Council's role, and the prevention of major conflicts and crises, are paramount, since its foreign policy is based on the assumption that peace and stability will be the rule in the years to come. With the aim of contributing to effective conflict prevention and crisis management, especially in the European region, the EU is establishing a rapid reaction force that is to be operational in 2003. The Treaty on European Union contains some valuable indications as to how this EU force will be employed. The EU has pledged to respect the principles of the UN Charter, and has explicitly placed its future military capability within the framework of its CFSP, which means that the force will be used in pursuance of its declared foreign policy. In addition, the use of force by the Union will have to be decided unanimously by member states, which are well established democracies, and will take into account the position of the Atlantic allies. All this means that, although the force could be used without a mandate from the Security Council if the circumstances made intervention imperative, the most probable use of the European force would be to sustain collective efforts to maintain peace and security, and to manage crises, in accordance with Security Council decisions. Indeed, the EU member states are amongst the most convinced defenders of the UN system.

Finally, the EU and its member states should make an effort to explain to their NATO allies, on the one hand, and to their neighbours and partners, on the other, not only the technical aspects of the force that is being established, but also the political intentions underlying it. In a world of states, in which violent confrontation has been the rule historically, it is possibly difficult to comprehend that the European Union is a brand new international actor whose aim is not to project its military power but to expand the ideas of conflict prevention through economic integration, region and partnership building, and democratic values. The EU force will not be employed for colonialist or imperialist purposes, but to promote peace and stability. In this respect, the constructive political relationships that the EU has with its neighbours and partners should be supplemented with an open and frank dialogue on ESDP.

During the 1990s, the principles of collective and limited intervention proved the resolute engagement by most of the international community in the stabilisation of civil conflicts and the struggle against massive violations of human rights. The future of those principles obviously depends on the will of the major players in international relations, particularly that of the United States, which has acted as 'benign hegemon' over the last decade, and that of the EU and its member states. The development of those principles obviously depends on the position adopted by other states as well. Nevertheless, whilst specific military interventions should be accepted by the international community as legitimate, they should also uphold universal values. Faced with serious humanitarian crises, states should rule out 'abstentionism', and be careful not to apply double standards. Equally, interventions should not be based on 'optimistic hegemonism' but on 'radical universalism', that is, the attitude that upholds equality, human rights and democracy.<sup>158</sup> The EU members are well placed to discharge their international responsibilities, and to propose and accept interventions whenever they are needed to defend those values, but only in cases in which they are actually needed.

Intervention for 'collective interests'? Military intervention to uphold 'universal values'? The intermediate position that has been presented in this paper will presumably be agreeable neither for major powers hiding

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<sup>158</sup> These concepts are defined in Fred Halliday, *The world at 2000* (Palgrave: London), 2001.

interventionist aims, nor for smaller states that want to keep their independence at any price. Unscrupulous major powers 'need' intervention (and other forms of projected armed force) to confirm their position or to assure their expansion. The smaller powers that do not respect human rights reject all kinds of intervention, even justified, in order to protect their sovereignty, and also so that governments can act freely vis-à-vis their own citizens. Europe's position should be a balanced one, from which both further unacceptable interventions by major powers, and violations of human rights in any state can be freely and responsibly criticised.





# *Abbreviations*

CARE	Cooperative for American Remittances to Europe (an NGO)
CESDP	Common European Security and Defence Policy
CFSP	Common Foreign and Security Policy
CJTF	Combined Joint Task Force(s)
CNN	Cable News Network
CSCE	Conference on Security and Cooperation in Europe
ECOMOG	ECOWAS Monitoring Group
ECOWAS	Economic Community of West African States
ESDP	European Security and Defence Policy
EU	European Union
FRY	Federal Republic of Yugoslavia
GA	General Assembly of the United Nations
ICJ	International Court of Justice
IFOR	Implementation Force (of Dayton peace accord)
KFOR	Kosovo peace implementation force
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
OSCE	Organisation for Security and Cooperation in Europe
PCIJ	Permanent Court of International Justice
PDF	Panamanian Defence Force
SC	Security Council of the United Nations
SFOR	Stabilisation Force
TEU	Treaty on European Union
UN	United Nations
UNAMSIL	UN Mission in Sierra Leone
UNOMIL	UN Observer Mission in Liberia
UNPROFOR	UN Protection Force (in former Yugoslavia)
US	United States
USSR	Union of Soviet Socialist Republics
WEU	Western European Union



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